

## **EXHIBIT 62**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:

CHAPTER 11

HIGHLAND CAPITAL

MANAGEMENT, L.P.,  
Debtor.

CASE NO. 19-34054-SGI11

HIGHLAND CAPITAL

MANAGEMENT, L.P.,  
Plaintiff,

ADVERSARY PROCEEDING

vs.

NO: 21-03000-SGI

HIGHLAND CAPITAL

MANAGEMENT FUND ADVISORS,

L.P.; NEXPOINT ADVISORS,

L.P.; HIGHLAND INCOME

FUND; NEXPOINT STRATEGIC

OPPORTUNITIES FUND;

NEXPOINT CAPITAL, INC.;

AND CLO HOLDCO, LTD.,

Defendants.

DEPOSITION OF ROB WILLS, ESQ.

VIA REMOTE VIDEOCONFERENCE

August 11, 2021

9:30 a.m., Central

Reported by:

Anne E. Vosburgh, CSR-6804, RPR, CRR

Job No. 197673

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<p>1</p> <p>2 REMOTE APPEARANCES:</p> <p>3</p> <p>4 On behalf of the Debtor:</p> <p>5 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>6 150 California Street</p> <p>7 San Francisco, California 94111</p> <p>8 BY: KENNETH BROWN, ESQ.</p> <p>9 - and -</p> <p>10 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>11 780 Third Avenue</p> <p>12 New York, New York 10017</p> <p>13 BY: HAYLEY WINOGRAD, ESQ.</p> <p>14</p> <p>15</p> <p>16 On behalf of Unsecured Creditors Committee:</p> <p>17 SIDLEY AUSTIN</p> <p>18 2021 McKinney Avenue</p> <p>19 Dallas, Texas 75201</p> <p>20 BY: CHANDLER ROGNES, ESQ.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 REMOTE APPEARANCES (Continued):</p> <p>3</p> <p>4 On behalf of HCRE Partners, LLC (n/k/a NexPoint Real</p> <p>5 Estate Partners, LLC):</p> <p>6 WICK PHILLIPS</p> <p>7 100 Throckmorton Street</p> <p>8 Fort Worth, Texas 76102</p> <p>9 BY: BRANT MARTIN, ESQ.</p> <p>10 LAUREN DRAWHORN, ESQ.</p> <p>11</p> <p>12 On behalf of the Senior Employees and CPCM, LLC:</p> <p>13 BAKER MCKENZIE</p> <p>14 1900 North Pearl Street</p> <p>15 Dallas, Texas 75201</p> <p>16 BY: DEBRA DANDENEAU, ESQ.</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 LA ASIA CANTY, Paralegal from Pachulski Stang</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 4	Page 5
<p>1</p> <p>2 I N D E X</p> <p>3</p> <p>4 ----- EXAMINATIONS -----</p> <p>5 WITNESS: ROB WILLS, ESQ.</p> <p>6 Examination by Mr. Brown 6</p> <p>7 Examination by Mr. Martin 113</p> <p>8 Re-Examination by Mr. Brown 124</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 ----- MARKED EXHIBITS -----</p> <p>14 NUMBER DESCRIPTION PAGE</p> <p>15 Exhibit A Amended Notice of 30(b)(6) 11</p> <p>16 Deposition</p> <p>17 Exhibit B SE Multifamily Holdings LLC, 14</p> <p>18 Limited Liability Company</p> <p>19 Agreement, August 23, 2018</p> <p>20 Exhibit C Bridge Loan Agreement, 20</p> <p>21 September 26, 2018</p> <p>22 Exhibit D Email chain, "RE: Project 72</p> <p>23 Unicorn - Final Org Charts,"</p> <p>24 with attachments</p> <p>25</p>	<p>1</p> <p>2 EXHIBITS (Continued):</p> <p>3 Exhibit E Email chain, "RE: Unicorn - 90</p> <p>4 DSTs"</p> <p>5 Exhibit F SE Multifamily Holdings LLC 98</p> <p>6 First Amended and Restated</p> <p>7 Limited Liability Company</p> <p>8 Agreement</p> <p>9 Exhibit H Email chain, "FW: Draft LLC 101</p> <p>10 Agreement"</p> <p>11 Exhibit I Email chain "RE: SE 122</p> <p>12 Multi-Family Holdings LLC:</p> <p>13 Amended and Restated,"</p> <p>14 beginning Bates</p> <p>15 Highland136853</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Remote Videoconference Deposition 3 August 11, 2021, 9:30 a.m., Central 4 ----- 5 PROCEEDINGS 6 ----- 7 ROB WILLS, ESQ., 8 (Having been called to appear via 9 remote videoconference, declared his 10 testimony to be truthful under penalty 11 of perjury.) 12 --- 13 EXAMINATION 14 BY MR. BROWN: 15 Q. Would you state your full name for 16 the record. 17 A. Sure. James Robert Wills, IV. 18 Q. Mr. Wills, I'm counsel for Highland 19 Capital Management L.P. I think I'll be 20 referring to that entity, the Debtor, 21 throughout the deposition as Highland. 22 Will you understand what I mean 23 when I refer to Highland as the Debtor? 24 A. Yes, sir. 25 Q. And your last name is pronounced</p>	<p style="text-align: right;">Page 7</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Willis? 3 A. Wills. 4 Q. Mr. Wills, you're an attorney; is 5 that correct? 6 A. Yes, sir. 7 Q. Okay. Can you tell me what your 8 current role is and position with 9 Wick Phillips? 10 A. Sure. I'm an equity partner here. 11 I'm one of two partners that run the real 12 estate group. 13 Q. Okay. Have you ever had your 14 deposition taken before? 15 A. No, sir. 16 Q. Have you ever taken a deposition 17 before? 18 A. I have. 19 Q. Okay. So can we all assume that 20 you understand the rules, and I can 21 reasonably dispense with explaining to you 22 the protocol and procedures for a deposition? 23 A. Yes. That's fine with me. 24 Q. Just very basically, you understand 25 you're under oath?</p>
<p style="text-align: right;">Page 8</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 A. Yes, sir. 3 Q. And that what you say here is like 4 what you say in a court of law? 5 A. Yes, sir. 6 Q. It's important for you to 7 understand my question. Wait until I'm 8 finished before you answer. 9 We don't want to be talking at the 10 same time because that makes for an unclear 11 record for the court reporter. 12 A. Not a problem. 13 Q. You understand all that? 14 A. Yes, sir. 15 Q. You also understand that you'll 16 have an opportunity to review the transcript 17 of this deposition and make corrections? 18 A. Yes, sir. 19 Q. Okay. And that I'll be able to 20 comment on those corrections at the time of 21 the hearing on this? 22 A. Yes, sir. 23 Q. Okay. Do you understand that 24 you've been designated as the witness for 25 Wick Phillips pursuant to Federal Rule of</p>	<p style="text-align: right;">Page 9</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Civil Procedure 30(b)(6), made applicable in 3 this proceeding by Bankruptcy Rule 9011? 4 A. Yes, sir. 5 Q. And you're aware that you're 6 required to provide complete and 7 knowledgeable answers on behalf of 8 Wick Phillips with respect to the topics that 9 have been designated in the Wick Phillips 10 Rule 30(b)(6) deposition notice? 11 A. Yes, sir. 12 Q. And you understand that your 13 responses will be binding on Wick Phillips in 14 this matter? 15 A. Yes, sir. 16 Q. And when I refer to "this matter," 17 again, at the risk of stating the obvious, 18 this deposition is being taken today in 19 connection with the Debtor's motion to 20 disqualify Wick Phillips from representing an 21 adverse party in connection with their proof 22 of claim against the Debtor in the Debtor's 23 bankruptcy case. 24 Is that your understanding? 25 A. Yes, sir.</p>

<p style="text-align: right;">Page 10</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. And you understand that what you</p> <p>3 say today in your testimony represents the</p> <p>4 testimony of the law firm of Wick Phillips</p> <p>5 rather than your personal testimony?</p> <p>6 A. Yes, sir, I do.</p> <p>7 Q. Okay. Do you know how you were</p> <p>8 selected as Wick Phillips' designated witness</p> <p>9 in connection with the disqualification</p> <p>10 motion?</p> <p>11 MR. MARTIN: I'm going to object</p> <p>12 and instruct the witness not to answer</p> <p>13 based on the question of privilege.</p> <p>14 That's the law firm's privilege and</p> <p>15 we're not going to waive it.</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Well, do you -- can you answer that</p> <p>18 question without disclosing the privilege?</p> <p>19 A. I'm one of two partners in the real</p> <p>20 estate section of the firm. This is a real</p> <p>21 estate matter that we handled.</p> <p>22 Q. Okay. What have you done to become</p> <p>23 prepared to provide complete, knowledgeable,</p> <p>24 and binding answers to the questions relating</p> <p>25 to the topics in the deposition notice?</p>	<p style="text-align: right;">Page 11</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I reviewed the Motion to Disqualify</p> <p>3 and the Brief in Support, my firm's</p> <p>4 Opposition in that brief; as well as talking</p> <p>5 with D.C. Sauter, a former partner of mine;</p> <p>6 Rachel Sam, a current partner of mine; and</p> <p>7 reviewing the exhibits and declarations</p> <p>8 attached to all the briefs, as well as our</p> <p>9 internal files and -- in relation.</p> <p>10 Q. Okay. How much time did you spend</p> <p>11 preparing for this deposition?</p> <p>12 A. It was over a couple of days. I</p> <p>13 would say several hours.</p> <p>14 Q. About five?</p> <p>15 A. I would say right about there.</p> <p>16 MR. BROWN: Could the court</p> <p>17 reporter mark Exhibit A?</p> <p>18 THE REPORTER: As Exhibit A?</p> <p>19 MR. BROWN: Sure. Mark Exhibit A</p> <p>20 as Exhibit A.</p> <p>21 (Amended Notice of 30(b)(6)</p> <p>22 Deposition, marked as Exhibit A.)</p> <p>23 BY MR. BROWN:</p> <p>24 Q. And housekeeping matter. I don't</p> <p>25 know --</p>
<p style="text-align: right;">Page 12</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 (Brief interruption.)</p> <p>3 BY MR. BROWN:</p> <p>4 Q. So Mr. Wills, do you have this in</p> <p>5 front of you or are you just looking at it on</p> <p>6 the screen?</p> <p>7 A. No. I've got the exhibits in front</p> <p>8 of me. It's also on the screen.</p> <p>9 Q. Okay. So have you seen this? It's</p> <p>10 called Debtor's Amended Notice of 30(b)(6)</p> <p>11 Deposition to Wick Phillips Gould &amp; Martin</p> <p>12 LLP.</p> <p>13 Have you seen this before?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And have you reviewed it?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And if you scroll down to page 4,</p> <p>18 that sets forth the topics that you have been</p> <p>19 designated as the witness for Wick Phillips</p> <p>20 on.</p> <p>21 Have you reviewed those topics?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And are you prepared to testify as</p> <p>24 Wick Phillips' designated witness on those</p> <p>25 topics today?</p>	<p style="text-align: right;">Page 13</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Very good.</p> <p>4 During the deposition today, you</p> <p>5 are required to answer the questions</p> <p>6 truthfully. If you don't know the answer to</p> <p>7 a question, that is a legitimate response if</p> <p>8 it's a truthful response, and I'm sure you</p> <p>9 know that.</p> <p>10 But I want to make sure you</p> <p>11 understand that if you say "I don't know" as</p> <p>12 an answer to one of the questions about the</p> <p>13 topics that have been designated, that I can</p> <p>14 consider that and advance the argument at the</p> <p>15 hearing that that is an admission by</p> <p>16 Wick Phillips that Wick Phillips doesn't have</p> <p>17 any knowledge or position with respect to the</p> <p>18 question that you answer "I don't know" on,</p> <p>19 and that I can argue that Wick Phillips can</p> <p>20 be precluded -- should be precluded from</p> <p>21 offering documents, evidence, or testimony at</p> <p>22 the hearing on that matter.</p> <p>23 Do you understand that?</p> <p>24 A. I do.</p> <p>25 Q. In this deposition, I may get a</p>

<p style="text-align: right;">Page 14</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 little sloppy and use the term "you" rather  3 than "Wick Phillips." But because of the  4 nature of this deposition, when I do use the  5 term "you," I'm going to be referring to  6 Wick Phillips unless I specifically say I  7 want your knowledge rather than  8 Wick Phillips'.  9 Do you understand that?  10 A. Yes, sir.  11 MR. BROWN: Ms. Vosburgh, can you  12 please mark Exhibit B as Exhibit B.  13 (SE Multifamily Holdings LLC,  14 Limited Liability Company  15 Agreement, August 23, 2018, marked  16 as Exhibit B.)  17 BY MR. BROWN:  18 Q. Mr. Wills, what has been marked as  19 Exhibit B is a copy of the SE Multifamily  20 Holdings LLC, Limited Liability Company  21 Agreement, dated August 23, 2018.  22 Have you seen this document before?  23 A. Yes, sir.  24 Q. And in what context did you see it?  25 A. In connection with this motion.</p>	<p style="text-align: right;">Page 15</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 Q. So is it accurate to say that  3 before you started preparing to be the Rule  4 30(b)(6) witness of Wick Phillips, you had  5 not seen this document before?  6 A. That's correct.  7 Q. So you personally, as opposed to  8 Wick Phillips, have had no role in connection  9 with this document, the preparation or  10 negotiation of this document, correct?  11 A. Yes, sir.  12 Q. Okay. Do you understand what  13 Wick Phillips' role, if any, was in  14 connection with this document?  15 A. Yes, sir.  16 Q. Okay. Could you tell me what  17 Wick Phillips' role was in connection with  18 the SE Multifamily Holdings Limited Liability  19 Company Agreement, which is Exhibit B.  20 A. Yes. Our -- Wick Phillips' role  21 was using this LLC Agreement in connection  22 with the financing of the Project Unicorn  23 transaction.  24 Q. Okay. Do you know what the purpose  25 of the SE Family Holdings -- let me make this</p>
<p style="text-align: right;">Page 16</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 simpler.  3 For this deposition, I would like  4 to refer to the SE Multifamily Holdings LLC  5 Limited Liability Company Agreement as the  6 LLC Agreement.  7 Is that acceptable to you, and will  8 we be talking about the same thing when we  9 talk about the LLC Agreement?  10 A. Sure. That works great.  11 Q. What was the purpose of the  12 LLC Agreement?  13 A. The purpose of the LLC Agreement  14 was, again, to use in connection with the  15 Project Unicorn structuring for the financing  16 of those acquisitions.  17 Q. Do you know who the parties were to  18 the LLC Agreement?  19 A. I know who the parties are from  20 reading the agreement, but I can't list them.  21 Q. Okay. So I think that Highland was  22 one of the parties. And the other party was  23 an entity known as HCRE Partners LLC.  24 Is that your understanding?  25 A. Yes, sir.</p>	<p style="text-align: right;">Page 17</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 Q. Okay. So -- and I'm going to refer  3 to HCRE Partners, LLC throughout this  4 deposition as "HCRE."  5 Will you understand what I'm  6 talking about and will we be talking about  7 the same thing when I refer to HCRE?  8 A. Yes.  9 Q. It's just the counterparty to  10 Highland in the LLC Agreement, or the other  11 party to the LLC Agreement.  12 Did Wick Phillips have any role in  13 connection with the negotiation and drafting  14 of the LLC Agreement?  15 A. No, sir.  16 Q. Okay. It didn't represent any  17 party?  18 A. Not at -- no, sir.  19 Q. Okay. So it didn't represent  20 either Highland or HCRE, correct?  21 A. Correct.  22 Q. Do you know if Wick Phillips had  23 any communications with either of the parties  24 to the LLC Agreement while the agreement was  25 being negotiated and drafted?</p>

<p style="text-align: right;">Page 18</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I'm not sure. I don't know.</p> <p>3 Q. Okay. Did Wick Phillips have</p> <p>4 occasion to at any time need to become aware</p> <p>5 of the ownership percentages as between the</p> <p>6 Debtor, Highland, and HCRE, that were</p> <p>7 allocated in the LLC Agreement?</p> <p>8 A. My suspicion would be in connection</p> <p>9 with the financing, the Loan Agreement with</p> <p>10 KeyBank and with Freddie, Freddie Mac,</p> <p>11 obviously, the organizational structure is</p> <p>12 important to those lenders and, to a certain</p> <p>13 extent, attached to those loan agreements.</p> <p>14 And so as it relates to that, yes,</p> <p>15 sir.</p> <p>16 Q. And do you know what the</p> <p>17 ownership -- does Wick Phillips know what the</p> <p>18 ownership percentages were in connection with</p> <p>19 the LLC Agreement?</p> <p>20 A. I know what the LLC Agreement says,</p> <p>21 yes, sir.</p> <p>22 Q. And what does the LLC Agreement</p> <p>23 say?</p> <p>24 A. It says --</p> <p>25 Q. I think if we flip to page 18,</p>	<p style="text-align: right;">Page 19</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 scroll to page 18 of the LLC Agreement...</p> <p>3 A. Yes, sir. Yes, sir.</p> <p>4 Do you want me to read that?</p> <p>5 Q. Yeah, sure.</p> <p>6 A. It says that HCRE Partners, LLC has</p> <p>7 a percentage interest of 51 percent, and</p> <p>8 Highland Capital Management L.P. has a</p> <p>9 percentage interest of 49 percent.</p> <p>10 Q. Okay. And do you have any</p> <p>11 understanding if those percentages were</p> <p>12 correct or incorrect at the time the Limited</p> <p>13 Partnership Agreement was executed?</p> <p>14 A. I assume they were correct at the</p> <p>15 time, yes, sir.</p> <p>16 Q. Did Wick Phillips have any</p> <p>17 communications with HCRE concerning the</p> <p>18 capital contributions required by the</p> <p>19 LLC Agreement?</p> <p>20 A. No, sir.</p> <p>21 Q. Did Wick Phillips have any</p> <p>22 communications with HCRE concerning the</p> <p>23 ownership interests set forth in the</p> <p>24 LLC Agreement?</p> <p>25 A. Only in connection with -- as a</p>
<p style="text-align: right;">Page 20</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 conduit to KeyBank or Freddie Mac in terms of</p> <p>3 who owns what.</p> <p>4 Q. Okay. We'll talk about that later,</p> <p>5 then, when we talk about the KeyBank</p> <p>6 Loan Agreement.</p> <p>7 A. Okay.</p> <p>8 Q. But no communications --</p> <p>9 Wick Phillips had no communications with the</p> <p>10 parties with respect to the ownership</p> <p>11 interests limited -- if we limit that to the</p> <p>12 context of just the LLC Agreement, its</p> <p>13 drafting, negotiation, formation; is that</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And the same answer if, instead of</p> <p>17 asking about ownership percentages, I asked</p> <p>18 about contributions?</p> <p>19 A. Yes, sir. Same answer.</p> <p>20 MR. BROWN: Okay. Ms. Vosburgh,</p> <p>21 can we mark Exhibit C as Exhibit C.</p> <p>22 (Bridge Loan Agreement, September</p> <p>23 26, 2018, marked as Exhibit C.)</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Okay. So Mr. Wills, up on the</p>	<p style="text-align: right;">Page 21</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 screen -- and I think you have a binder of</p> <p>3 exhibits, I assume?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So up on the screen marked as</p> <p>6 Exhibit C, and hopefully in your binder also</p> <p>7 as Exhibit C, is a document called the Bridge</p> <p>8 Loan Agreement dated as of September 26,</p> <p>9 2018, among a group of entities set forth on</p> <p>10 the agreement that I won't repeat, who are</p> <p>11 the borrowers, and also the lender, KeyBank</p> <p>12 National Association, as agent, and KeyBanc</p> <p>13 Capital Markets as the sole lead arranger and</p> <p>14 bookrunner.</p> <p>15 Is that the document you have as</p> <p>16 Exhibit C?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. Have you ever seen this</p> <p>19 document before?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. Are you familiar with it?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Is it a true copy of -- let's --</p> <p>24 this Exhibit C, for the rest of the</p> <p>25 deposition, I'm going to refer to it as the</p>

<p style="text-align: right;">Page 22</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Loan Agreement.</p> <p>3 And will you understand and be</p> <p>4 comfortable referring to Exhibit C as the</p> <p>5 Loan Agreement?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Is this a true copy of the</p> <p>8 Loan Agreement?</p> <p>9 A. Yes, sir. I believe so.</p> <p>10 Q. Okay. Did Wick Phillips have any</p> <p>11 role in connection with the Loan Agreement?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Can you describe the role that</p> <p>14 Wick Phillips played in connection with the</p> <p>15 Loan Agreement?</p> <p>16 A. Sure. We helped the property-level</p> <p>17 borrowers here in connection with the</p> <p>18 Project Unicorn acquisition.</p> <p>19 This -- the Loan Agreement that</p> <p>20 we're looking at was for a bucket of</p> <p>21 properties that could not get agency</p> <p>22 financing through Freddie Mac. So we needed</p> <p>23 KeyBank to come in and provide sort of some</p> <p>24 additional financing in connection with the</p> <p>25 Project Unicorn closing.</p>	<p style="text-align: right;">Page 23</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. Okay. Did Wick Phillips represent</p> <p>3 Highland in connection with the KeyBank -- in</p> <p>4 connection with the Loan Agreement?</p> <p>5 A. Highland is a co-borrower, but not</p> <p>6 separately, no, sir.</p> <p>7 Q. Okay. So is the answer to the</p> <p>8 question did Wick Phillips represent Highland</p> <p>9 in connection with the Loan Agreement yes or</p> <p>10 no?</p> <p>11 A. No. No, sir.</p> <p>12 Q. It had no representation of</p> <p>13 Highland?</p> <p>14 A. That's correct.</p> <p>15 Q. Can you turn to -- let's flip to</p> <p>16 page 3 of the Loan Agreement.</p> <p>17 Okay. So I want to focus you on</p> <p>18 the term "Borrower" under the Loan Agreement.</p> <p>19 A. Okay.</p> <p>20 Q. Do you see where the term</p> <p>21 "Borrower" is defined to include</p> <p>22 Highland Capital?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And Highland Capital has been</p> <p>25 defined earlier in the Loan Agreement, has it</p>
<p style="text-align: right;">Page 24</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 not, as Highland Capital Management, L.P.?</p> <p>3 A. Correct.</p> <p>4 Q. So Highland, the Debtor, was a</p> <p>5 borrower under the Loan Agreement, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did Wick Phillips represent the</p> <p>8 borrowers under the Loan Agreement?</p> <p>9 A. Wick Phillips represented some of</p> <p>10 the borrowers.</p> <p>11 Q. Okay. And which borrowers did it</p> <p>12 not represent?</p> <p>13 A. We did not represent what we've</p> <p>14 been calling Highland.</p> <p>15 Q. Where does it say in the</p> <p>16 Loan Agreement that you didn't represent</p> <p>17 Highland?</p> <p>18 A. I don't know that the</p> <p>19 Loan Agreement would say that.</p> <p>20 Q. Okay.</p> <p>21 MR. MARTIN: I don't think he</p> <p>22 finished his answer, Counsel.</p> <p>23 MR. BROWN: I'm sorry.</p> <p>24 MR. MARTIN: The question on the</p> <p>25 table was which borrowers did</p>	<p style="text-align: right;">Page 25</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Wick Phillips not represent, and he was</p> <p>3 in the middle of providing his answer.</p> <p>4 MR. BROWN: I apologize. I didn't</p> <p>5 mean to interrupt.</p> <p>6 MR. MARTIN: That's okay.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. Can you please provide a complete</p> <p>9 answer to the question?</p> <p>10 A. Sure.</p> <p>11 Initially we represented the</p> <p>12 NexPoint entities and the property-level</p> <p>13 entities all as co-borrowers. And KeyBank</p> <p>14 needed more credit from the borrower side</p> <p>15 since this was such a large transaction, and</p> <p>16 that's when Highland Capital was added as an</p> <p>17 additional borrower to the loan.</p> <p>18 Q. Okay. Can we scroll to page 51.</p> <p>19 Can you please focus on</p> <p>20 Section 4.01(b).</p> <p>21 A. Okay.</p> <p>22 Q. This is -- this discusses certain</p> <p>23 conditions to the Loan Agreement. And (b)</p> <p>24 says:</p> <p>25 "The Administrative Agent shall</p>



<p style="text-align: right;">Page 26</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 have received" -- as a condition -- "a 3 favorable written opinion (addressed 4 to the Administrative Agent and the 5 Lenders and dated the Effective Date) 6 of Wick Phillips Gould &amp; Martin, LLP, 7 counsel for the Borrower." 8 Is that statement referring to 9 Wick Phillips as "counsel for the borrower" 10 and referencing back to the borrower as 11 several entities, including Highland, is that 12 statement in the Loan Agreement incorrect? 13 A. I mean, that's what it says, yes, 14 sir. 15 Q. Is it incorrect? 16 A. It is incorrect as to who 17 Wick Phillips represented. It is correct in 18 terms of providing a legal opinion. You 19 wouldn't have multiple legal opinions from 20 different firms for the same borrower, 21 typically, or collection of borrowers. 22 Q. So the Loan Agreement -- your 23 testimony today on behalf of Wick Phillips is 24 that this Loan Agreement, to the extent it 25 refers to Wick Phillips' representation of</p>	<p style="text-align: right;">Page 27</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 the borrower, is inaccurate to the extent the 3 borrower includes Highland; is that correct? 4 MR. MARTIN: Objection, form. 5 A. Yes, sir. That's what we're 6 saying. 7 BY MR. BROWN: 8 Q. Did Wick Phillips say anything, 9 ever raise the issue of the lack of accuracy 10 of these representations in the 11 Loan Agreement to anybody at any time? 12 MR. MARTIN: Objection to form. 13 A. Not to my knowledge. 14 BY MR. BROWN: 15 Q. Okay. Can we also scroll forward 16 to page 76. This is Article IX of the 17 Loan Agreement. Section 9.01 discusses 18 Notices. 19 And do you see at Section 9.01(a) 20 where it says, in the case of notices, "if to 21 the Borrower, in care of Highland Capital 22 Management," with copies to Wick Phillips? 23 A. Yes, sir. I see that. 24 Q. Okay. So I'm just trying to 25 ascertain Wick Phillips' position here. Is</p>
<p style="text-align: right;">Page 28</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 it that Section 9.01(a) is inaccurate to the 3 extent it reflects that Wick Phillips 4 represented Highland Capital Management in 5 connection with the Loan Agreement? 6 A. My suspicion is this was the same 7 notice provision as had been there in 8 previous loans that we had worked on -- we, 9 Wick Phillips, had worked on with KeyBank. 10 And once Highland was added as a 11 co-borrower, which had not been the case 12 previously, it was not changed. 13 Q. Okay. So was Wick Phillips 14 receiving notices on behalf of 15 Highland Capital Management relating to the 16 Loan Agreement or not? 17 A. Not that I'm aware of. 18 Q. Okay. So did Wick Phillips ever 19 raise the issue with any of the parties to 20 the Loan Agreement that this Section 9.01(a) 21 of the Loan Agreement did not accurately 22 reflect the position of Wick Phillips with 23 respect to its representation of 24 Highland Capital Management? 25 MR. MARTIN: Objection, form.</p>	<p style="text-align: right;">Page 29</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 A. Well, I think we would want the 3 notices, with the borrower being a collection 4 of borrowers, of which we did represent some. 5 BY MR. BROWN: 6 Q. And why wouldn't the notices be in 7 care of the entities that you represented as 8 opposed to an entity that you didn't 9 represent? 10 A. I don't know. 11 Q. Okay. Give me a moment, please. 12 Do you have a copy of 13 Wick Phillips' Brief in Opposition to the 14 Debtor's Motion to Disqualify in front of 15 you? 16 A. Not in front of me, no, sir. 17 Q. I'm looking at it right now, and I 18 know that you have read it before. 19 And at page 4 of that Opposition, 20 Wick Phillips says: 21 "As a borrower under the bridge 22 loan, Wick Phillips was counsel to 23 HCM L.P." 24 So Wick Phillips' statement in a 25 document filed with the Court on May 6th,</p>

<p style="text-align: right;">Page 30</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 2021, is inconsistent with your testimony  3 today, is it not?  4 MR. MARTIN: Objection, form.  5 A. I'm sorry. Did you say HC L.P.  6 or --  7 BY MR. BROWN:  8 Q. HCM L.P., which is Highland Capital  9 Management, L.P., the Debtor, Highland.  10 A. Right.  11 Q. We're calling it Highland.  12 So in Wick Phillips' brief filed on  13 May 6th, 2021, in opposition to the Motion to  14 Disqualify, Wick Phillips said:  15 "As a borrower under the bridge  16 loan" -- which is what we're referring  17 to as the Loan Agreement --  18 "Wick Phillips was counsel to HCM  19 L.P."  20 So that is, by my lights,  21 inconsistent with your testimony today.  22 Can you explain why you are  23 testifying in a manner that is not consistent  24 with an admission Wick Phillips has already  25 made in pleadings filed with the bankruptcy</p>	<p style="text-align: right;">Page 31</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 court?  3 MR. MARTIN: Objection, form.  4 A. Yes. I believe what I said was  5 that -- I guess what we're calling here  6 Highland is a co-borrower under this  7 Loan Agreement that was added later on.  8 And, yes, we did represent the  9 co-borrowers in connection with this  10 Loan Agreement.  11 BY MR. BROWN:  12 Q. Okay. So you agree, then, with the  13 statement made in Wick Phillips' May 6th  14 filing in opposition to the disqualification  15 motion that Wick Phillips did represent the  16 borrower, Highland, under the bridge loan; is  17 that correct?  18 A. We represented all of the borrowers  19 as co-borrowers in this -- with this loan.  20 Q. Okay. Other than the borrowers --  21 other than the co-borrowers, did  22 Wick Phillips represent any other entities in  23 connection with the Loan Agreement?  24 A. No, sir.  25 Q. Okay. Does Wick Phillips have a</p>
<p style="text-align: right;">Page 32</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 retention agreement in connection with the  3 work it did for the borrowers under the --  4 relating to the Loan Agreement?  5 A. No, sir.  6 Q. Why not?  7 A. I don't know the answer to that  8 question.  9 Q. Does Wick Phillips normally require  10 retention agreements when it undertakes a  11 client representation?  12 A. In an ideal world, we do, yes, sir,  13 but it's not a requirement.  14 Q. Can you tell me what Wick Phillips'  15 custom and practice is with respect to  16 obtaining retention agreements when it  17 undertakes the representation of a client?  18 A. A similar answer. We ideally would  19 have an engagement letter or retention  20 letter, as you mentioned. But it is not  21 required for us to open a matter, or a new  22 client matter.  23 Q. Okay. Do you personally get  24 retention agreements from your clients when  25 you undertake a representation?</p>	<p style="text-align: right;">Page 33</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 A. I certainly try to.  3 Q. Do you always do it?  4 A. I do not.  5 Q. Did Wick Phillips obtain a conflict  6 waiver from the borrowers, or any of them,  7 concerning its joint representation of them  8 in connection with the Loan Agreement?  9 A. I don't believe so.  10 Q. Have you ever seen a conflict  11 waiver?  12 A. Yes, sir.  13 Q. I'm sorry. I didn't mean it that  14 way. That's the problem with lawyers.  15 They're too literal.  16 Have you ever seen a conflict  17 waiver in connection with the Loan Agreement?  18 A. No, sir.  19 Q. Okay. Did you have -- in your  20 preparation for this deposition and to be the  21 designated witness of Wick Phillips, was  22 there any discussion or reference to a  23 conflict waiver among Wick Phillips' joint  24 clients relating to the Loan Agreement?  25 A. Not that I'm aware of.</p>

<p style="text-align: right;">Page 34</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. Do you know whether Wick Phillips</p> <p>3 considered whether a conflict waiver was</p> <p>4 necessary because of the joint representation</p> <p>5 of clients under the Loan Agreement?</p> <p>6 A. I do not.</p> <p>7 Q. Do you know if Wick Phillips</p> <p>8 undertook any analysis to determine if the</p> <p>9 joint representation of the borrowers</p> <p>10 presented a conflict or a potential conflict</p> <p>11 for which a conflict waiver was required?</p> <p>12 A. I do not.</p> <p>13 Q. You don't know if it was done?</p> <p>14 A. I don't know.</p> <p>15 Q. Okay. Were there any discussions</p> <p>16 of the issue of the advisability or necessity</p> <p>17 of a conflict waiver in connection with the</p> <p>18 Loan Agreement that Wick Phillips had?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Do you -- is Wick Phillips familiar</p> <p>21 with the Texas Rules of Professional Conduct,</p> <p>22 Section 1.07?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And do you know if it's familiar</p> <p>25 with Section 1.07(a) that requires written</p>	<p style="text-align: right;">Page 35</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 consent for common representations?</p> <p>3 MR. MARTIN: Objection, form.</p> <p>4 A. Yes, sir.</p> <p>5 BY MR. BROWN:</p> <p>6 Q. And do you know why Wick Phillips</p> <p>7 did not obtain a written conflict waiver in</p> <p>8 conformity and compliance with</p> <p>9 Section 1.07 --</p> <p>10 MR. MARTIN: Objection, form.</p> <p>11 BY MR. BROWN:</p> <p>12 Q. -- in connection with the joint</p> <p>13 representation of clients under the</p> <p>14 Loan Agreement?</p> <p>15 MR. MARTIN: Same objection.</p> <p>16 A. I do not know.</p> <p>17 BY MR. BROWN:</p> <p>18 Q. Do you know if Wick Phillips had</p> <p>19 any discussions with any of the borrowers --</p> <p>20 as that term is defined under the</p> <p>21 Loan Agreement -- about actual or potential</p> <p>22 conflicts that could arise from</p> <p>23 Wick Phillips' joint representation of them</p> <p>24 under the Loan Agreement?</p> <p>25 A. I don't.</p>
<p style="text-align: right;">Page 36</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. Did Wick Phillips undertake any</p> <p>3 analysis of its responsibilities in</p> <p>4 connection with the joint representation and</p> <p>5 whether the representation could be</p> <p>6 undertaken without an improper impact on its</p> <p>7 responsibilities?</p> <p>8 MR. MARTIN: Objection, form.</p> <p>9 A. I'm not aware of that.</p> <p>10 BY MR. BROWN:</p> <p>11 Q. Did Wick Phillips consult with any</p> <p>12 of the borrowers concerning the implications</p> <p>13 of the joint representation, for example, on</p> <p>14 the attorney-client privilege?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know if Wick Phillips</p> <p>17 consulted with any of the borrowers</p> <p>18 concerning the advantages and risks to them</p> <p>19 individually of having Wick Phillips jointly</p> <p>20 represent them in connection with the Loan</p> <p>21 Agreement?</p> <p>22 MR. MARTIN: Objection, form.</p> <p>23 A. I don't know.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Do you have any understanding of</p>	<p style="text-align: right;">Page 37</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 whether the representation -- well, as you</p> <p>3 sit here today on behalf of Wick Phillips, do</p> <p>4 you have an opinion on whether or not the</p> <p>5 joint representation of the multiple</p> <p>6 borrowers under the Loan Agreement gave rise</p> <p>7 to any actual or potential conflicts?</p> <p>8 MR. MARTIN: Objection, form.</p> <p>9 A. I don't have an opinion.</p> <p>10 BY MR. BROWN:</p> <p>11 Q. Do you understand that HCRE was</p> <p>12 designated as the lead borrower under the</p> <p>13 Loan Agreement?</p> <p>14 A. Yes, sir.</p> <p>15 Q. It was, to your understanding,</p> <p>16 designated as the lead borrower?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Can we -- let's see.</p> <p>19 MS. CANTY: Ken, if you tell me the</p> <p>20 section, I can probably jump to it</p> <p>21 quickly.</p> <p>22 MR. BROWN: Yeah. It's</p> <p>23 Section 1.05, page 14.</p> <p>24 MS. CANTY: Sorry. I have it as</p> <p>25 page 25.</p>

<p style="text-align: right;">Page 38</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. BROWN: No, I'm sorry. That --</p> <p>3 let's first --</p> <p>4 Okay. That's fine. That's fine.</p> <p>5 BY MR. BROWN:</p> <p>6 Q. So if you -- could you review this</p> <p>7 Section 1.05, Mr. Wills.</p> <p>8 A. Sure. (Reviewing document.)</p> <p>9 Okay.</p> <p>10 Q. Okay. Did you have a chance to</p> <p>11 look at both (a) and (b) of Section 1.05?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. So the lead borrower under</p> <p>14 the Loan Agreement is HCRE, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And this Section 1.05 talks about</p> <p>17 the appointment of the lead borrower and some</p> <p>18 of the rights and obligations of the lead</p> <p>19 borrower, correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And Section (b) says:</p> <p>22 "The proceeds of each loan and</p> <p>23 advance provided under the Loans which</p> <p>24 is requested by the Lead Borrower</p> <p>25 shall be advanced as and when</p>	<p style="text-align: right;">Page 39</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 otherwise provided herein or as</p> <p>3 otherwise indicated by the Lead</p> <p>4 Borrower."</p> <p>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. And that "The Lead Borrower shall</p> <p>8 cause the transfer of the proceeds to the</p> <p>9 other borrowers on whose behalf such loan and</p> <p>10 advance was obtained."</p> <p>11 So is it your understanding that</p> <p>12 under this Loan Agreement, the lead borrower</p> <p>13 had the ability to both determine when the</p> <p>14 advances were made and to direct where the</p> <p>15 transfers went?</p> <p>16 A. Yes, sir, according to this</p> <p>17 provision.</p> <p>18 Q. Okay. And do you also have an</p> <p>19 understanding that the other borrowers,</p> <p>20 including Highland, were on the hook jointly</p> <p>21 and severally for all amounts that were</p> <p>22 borrowed under the Loan Agreement?</p> <p>23 A. Yes, sir.</p> <p>24 Q. So, in your mind, does the fact</p> <p>25 that HCRE could determine when advances were</p>
<p style="text-align: right;">Page 40</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 made and direct how those advances were</p> <p>3 applied, while Highland was jointly and</p> <p>4 severally liable for those advances, does</p> <p>5 that give rise to a conflict or potential</p> <p>6 conflict between Highland and HCRE?</p> <p>7 MR. MARTIN: Objection, form.</p> <p>8 A. No, sir, not in my opinion.</p> <p>9 BY MR. BROWN:</p> <p>10 Q. Okay. Why not?</p> <p>11 A. Well, my understanding is the</p> <p>12 Highland entity is more -- was added as a</p> <p>13 borrower more in a guarantee/guarantor</p> <p>14 context. And so the HCRE, or the lead</p> <p>15 borrower, would just be directing the funds</p> <p>16 to the property-level borrowers in connection</p> <p>17 with each of the various acquisitions.</p> <p>18 Q. Do you know that's what occurred?</p> <p>19 A. That's the setup of the</p> <p>20 Loan Agreement.</p> <p>21 Q. Do you have any knowledge on</p> <p>22 whether HCRE used moneys that it obtained</p> <p>23 under the Loan Agreement to make a capital</p> <p>24 contribution to the Limited Partnership?</p> <p>25 A. I don't have that knowledge, no,</p>	<p style="text-align: right;">Page 41</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 sir.</p> <p>3 Q. You don't know one way or the</p> <p>4 other?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you know if Wick Phillips ever</p> <p>7 explained to any of the borrowers the</p> <p>8 operation of the Loan Agreement to the extent</p> <p>9 that it permitted HCRE to direct the</p> <p>10 advances, but that all of the other borrowers</p> <p>11 were liable under the Loan Agreement,</p> <p>12 irrespective of how the advances were</p> <p>13 directed?</p> <p>14 MR. MARTIN: Objection, form.</p> <p>15 A. I don't know.</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Did Wick Phillips ever advise</p> <p>18 Highland that it was liable for all amounts</p> <p>19 due under the Loan Agreement whether or not</p> <p>20 it received the proceeds or received the</p> <p>21 benefit of the proceeds?</p> <p>22 A. I don't know.</p> <p>23 Q. Do you know whether or not Highland</p> <p>24 received the benefit of the proceeds advanced</p> <p>25 under the Loan Agreement?</p>

<p style="text-align: right;">Page 42</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I don't.</p> <p>3 Q. Who was Wick Phillips' client</p> <p>4 contact at HCRE in connection with the</p> <p>5 Loan Agreement?</p> <p>6 A. I believe there were several that</p> <p>7 we typically deal with, Matt Goetz,</p> <p>8 Matt McGraner. Freddy Chang was at one point</p> <p>9 some form of in-house counsel there.</p> <p>10 Q. So Matt Goetz. Do you know if</p> <p>11 Matt Goetz was an employee of Highland?</p> <p>12 A. I don't know.</p> <p>13 Q. Do you know who he was employed by?</p> <p>14 A. I don't.</p> <p>15 Q. What about Mr. McGraner; do you</p> <p>16 know if he was an employee of Highland?</p> <p>17 A. I don't.</p> <p>18 Q. Do you know if he was an employee</p> <p>19 of HCRE?</p> <p>20 A. I do not.</p> <p>21 Q. What about Freddy Chang; do you</p> <p>22 know if he was an employee of Highland?</p> <p>23 A. I don't.</p> <p>24 Q. Do you know if he was an employee</p> <p>25 of HCRE?</p>	<p style="text-align: right;">Page 43</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I do not.</p> <p>3 Q. You understand you're testifying on</p> <p>4 behalf of Wick Phillips right now, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Who was Wick Phillips' client</p> <p>7 contact at Highland in connection with the</p> <p>8 Loan Agreement?</p> <p>9 A. I don't believe we have a client</p> <p>10 contact for Highland.</p> <p>11 Q. And why was that?</p> <p>12 A. We -- I mean, our silo is the real</p> <p>13 estate silo for NexPoint that handles loan</p> <p>14 agreements like we're looking at right now.</p> <p>15 Highland is a separate part of that company.</p> <p>16 Q. But Wick Phillips has already</p> <p>17 acknowledged in its Opposition that it</p> <p>18 represented Highland in connection with the</p> <p>19 Loan Agreement. And I'm just trying to</p> <p>20 establish whether, in connection with that</p> <p>21 acknowledged representation, Wick Phillips</p> <p>22 had a client contact at Highland.</p> <p>23 And so the question is did</p> <p>24 Wick Phillips have a client contact and, if</p> <p>25 so, who?</p>
<p style="text-align: right;">Page 44</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. No client contact. Okay.</p> <p>4 Did Wick Phillips have contact with</p> <p>5 James Dondero in connection with the</p> <p>6 Loan Agreement?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Okay. With respect to Mr. Geotz,</p> <p>9 who you did indicate was a client contact for</p> <p>10 HCRE --</p> <p>11 MR. MARTIN: Objection, form.</p> <p>12 BY MR. BROWN:</p> <p>13 Q. -- how did Wick Phillips determine</p> <p>14 what hat, if you will, Mr. Geotz was wearing</p> <p>15 and what entity he was speaking on behalf of,</p> <p>16 communicating on behalf of?</p> <p>17 MR. MARTIN: Objection, form.</p> <p>18 A. My assumption is wearing a NexPoint</p> <p>19 hat, as typically is the case.</p> <p>20 BY MR. BROWN:</p> <p>21 Q. And what is that assumption based</p> <p>22 on?</p> <p>23 A. Our prior representations and</p> <p>24 dealings.</p> <p>25 Q. But is it true that in connection</p>	<p style="text-align: right;">Page 45</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 with this representation, Wick Phillips'</p> <p>3 representation of the borrowers under the</p> <p>4 Loan Agreement, you don't know how</p> <p>5 Wick Phillips made a determination of what</p> <p>6 hat the individuals it spoke to were wearing,</p> <p>7 do you?</p> <p>8 MR. MARTIN: Objection, form.</p> <p>9 A. I don't know if a determination was</p> <p>10 made at all, no, sir.</p> <p>11 BY MR. BROWN:</p> <p>12 Q. And do you know whether</p> <p>13 Wick Phillips made any distinction in terms</p> <p>14 of people that -- the client contacts it</p> <p>15 communicated with in connection with the</p> <p>16 Loan Agreement, whether it made any</p> <p>17 distinction whether those individuals were</p> <p>18 communicating with it on behalf of Highland</p> <p>19 or HCRE?</p> <p>20 MR. MARTIN: Objection, form.</p> <p>21 A. I don't know.</p> <p>22 MR. MARTIN: Is now a good time to</p> <p>23 take a break?</p> <p>24 (Recess taken.)</p> <p>25</p>

<p style="text-align: right;">Page 46</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 BY MR. BROWN:</p> <p>3 Q. Mr. Wills, do you know what the</p> <p>4 purpose of the Loan Agreement was?</p> <p>5 A. To provide financing in connection</p> <p>6 with the Project Unicorn property</p> <p>7 acquisitions.</p> <p>8 Q. Which was going to be done by the</p> <p>9 LLC? The acquisitions were going to be by</p> <p>10 the LLC?</p> <p>11 A. By some subsidiaries, but yes, sir.</p> <p>12 Q. And do you know what HCRE's role</p> <p>13 was in connection with the Loan Agreement?</p> <p>14 A. They were the lead borrower.</p> <p>15 Q. Okay. And we've already talked</p> <p>16 about to some extent what that involved.</p> <p>17 Do you know what Highland's role</p> <p>18 was in connection with the Loan Agreement?</p> <p>19 A. It's a little bit like I've already</p> <p>20 mentioned, but primarily to provide more</p> <p>21 credit to the borrowing base, to the</p> <p>22 collective definition of "borrower."</p> <p>23 Q. Do you know whether the ownership</p> <p>24 structure of the Limited Partnership was an</p> <p>25 issue that was addressed in the</p>	<p style="text-align: right;">Page 47</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Loan Agreement?</p> <p>3 A. The Highland Limited Partnership?</p> <p>4 Q. I'm sorry. Do you know -- let me</p> <p>5 rephrase the question. I misstated it.</p> <p>6 Do you know whether or not the</p> <p>7 ownership interests between -- as and between</p> <p>8 Highland and HCRE in the LLC was an issue</p> <p>9 that was part of the Loan Agreement?</p> <p>10 A. I'm not sure I understand your</p> <p>11 question. I apologize.</p> <p>12 Q. Okay. Did the ownership interest</p> <p>13 in the LLC between Highland and HCRE -- was</p> <p>14 that a component of the Loan Agreement?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And in what way?</p> <p>17 A. Just as far as which party was</p> <p>18 51 percent and which was 49 percent.</p> <p>19 Q. I'd like to scroll to Schedule 3.15</p> <p>20 of the Loan Agreement.</p> <p>21 MS. CANTY: Do you know which page</p> <p>22 that's on, Ken?</p> <p>23 Never mind. I see it.</p> <p>24 MR. BROWN: Yeah.</p> <p>25</p>
<p style="text-align: right;">Page 48</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 BY MR. BROWN:</p> <p>3 Q. Okay. Let's go back to the prior</p> <p>4 page, the caption page, Schedule 3.15.</p> <p>5 Okay. Mr. Wills, are you familiar</p> <p>6 with Schedule 3.15?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What role did Wick Phillips have in</p> <p>9 connection with Schedule 3.15 of the</p> <p>10 Loan Agreement?</p> <p>11 A. We provided these -- the</p> <p>12 attachments to KeyBank to attach here as the</p> <p>13 schedule.</p> <p>14 Q. Okay. Let's look at the</p> <p>15 attachments.</p> <p>16 MR. BROWN: Flip -- if we could</p> <p>17 flip to the very next page.</p> <p>18 Okay. Is there any way we could</p> <p>19 change the view on that so it's upright?</p> <p>20 Okay.</p> <p>21 BY MR. BROWN:</p> <p>22 Q. Is this one of the attachments?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And Wick Phillips prepared this</p> <p>25 attachment in connection with the</p>	<p style="text-align: right;">Page 49</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Loan Agreement?</p> <p>3 MR. MARTIN: Objection, form.</p> <p>4 A. No, sir. We provided these</p> <p>5 schedules to KeyBank.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Okay. You provided the schedules</p> <p>8 to KeyBank. Did Wick Phillips prepare the</p> <p>9 schedules?</p> <p>10 A. No, sir.</p> <p>11 Q. Did it have any -- did it have any</p> <p>12 role in connection with the preparation of</p> <p>13 the schedules?</p> <p>14 A. Just as sort of the conduit between</p> <p>15 the business folks and the lender.</p> <p>16 Q. The business folks at the borrower?</p> <p>17 A. Correct.</p> <p>18 Q. So did Wick Phillips make any</p> <p>19 changes to these schedule -- to the schedules</p> <p>20 attached as schedule -- to Schedule 3.15, did</p> <p>21 it make any changes to them after it received</p> <p>22 them from the borrowers?</p> <p>23 A. No, sir.</p> <p>24 Q. Did it review -- did it review</p> <p>25 these attachments?</p>

<p style="text-align: right;">Page 50</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Yes, sir.</p> <p>3 Q. And did it make any determination</p> <p>4 as to their accuracy?</p> <p>5 A. I would assume so, yes, sir.</p> <p>6 Q. And, for example, this first</p> <p>7 schedule reflects the ownership interests of</p> <p>8 Highland and HCRE in the LLC; is that</p> <p>9 correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And it reflects the ownership</p> <p>12 interest as 49 percent for Highland and</p> <p>13 51 percent for HCRE; is that correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And you don't have -- is it your</p> <p>16 understanding that that ownership allocation</p> <p>17 was correct at the time these schedules were</p> <p>18 prepared?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And let's scroll down to the next</p> <p>21 attachment in the schedule.</p> <p>22 This is the second attachment. At</p> <p>23 the bottom it says it's for Gulfstream Isles.</p> <p>24 Do you see that?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 51</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. And that would be a reference to</p> <p>3 the underlying property that was being</p> <p>4 acquired; is that correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. And, again, the ownership</p> <p>7 percentages for HCRE and Highland in the LLC</p> <p>8 are reflected as the same, 51 for HCRE and</p> <p>9 49 percent for Highland. Correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And based on your prior review of</p> <p>12 these attachments as Schedule 3.15, your</p> <p>13 recollection is that they all -- I think</p> <p>14 there's 22 of them, and they all reflect the</p> <p>15 same ownership percentage in the LLC; is that</p> <p>16 correct?</p> <p>17 A. I think so, yes, sir. We can flip</p> <p>18 through them, but I assume so.</p> <p>19 Q. Yeah. Why don't we just briefly</p> <p>20 flip through them. If we go to the next one.</p> <p>21 Again, this is for Victoria Park.</p> <p>22 Same ownership percentage reflected</p> <p>23 there, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And the next one, this is for the</p>
<p style="text-align: right;">Page 52</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Reserve at River Walk.</p> <p>3 Same ownership percentage reflected</p> <p>4 there, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. The next one, Heights at</p> <p>7 Olde Towne.</p> <p>8 Same ownership percentage reflected</p> <p>9 there, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. I don't think we have to</p> <p>12 flip further after these. They say what they</p> <p>13 say.</p> <p>14 A. Okay.</p> <p>15 MR. MARTIN: Mr. Brown, I don't</p> <p>16 pretend to know as much about these</p> <p>17 transactions as you certainly do, but I</p> <p>18 do believe that starting with some of</p> <p>19 the properties towards the back, there</p> <p>20 are -- while some of the ownership</p> <p>21 percentages may be the same, you may</p> <p>22 want to go over them. Governors Green,</p> <p>23 Stoney Ridge, Oak Mill --</p> <p>24 MR. BROWN: Okay.</p> <p>25 MR. MARTIN: The structures do</p>	<p style="text-align: right;">Page 53</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 change a little bit.</p> <p>3 BY MR. BROWN:</p> <p>4 Q. Okay. We can do that. Let's look</p> <p>5 through each one of them. Let's just do a</p> <p>6 page flip.</p> <p>7 Again, this is Governors Green.</p> <p>8 With respect to the interests that</p> <p>9 are reflected in the LLC, they're the same,</p> <p>10 correct, for Highland and HCRE, as the</p> <p>11 others, 49 percent and 51 percent</p> <p>12 respectively?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. Let's go down to the next</p> <p>15 one, Stoney Ridge.</p> <p>16 Again, focusing just on the</p> <p>17 ownership interest in the LLC, it's reflected</p> <p>18 as 49 percent Highland and 51 percent HCRE,</p> <p>19 correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And the next one, Oak Mill.</p> <p>22 Again, focusing just on the LLC,</p> <p>23 the ownership interest is reflected at</p> <p>24 49 percent for Highland and 51 percent for</p> <p>25 HCRE. Correct?</p>

<p style="text-align: right;">Page 54</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Yes, sir.</p> <p>3 Q. And the next one, which is</p> <p>4 Battleground Park, and focusing again on the</p> <p>5 LLC, the ownership interests are reflected as</p> <p>6 49 percent Highland, 51 percent HCRE.</p> <p>7 Correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And for Lakes at Renaissance Park,</p> <p>10 again focusing on the LLC, the ownership</p> <p>11 percentage is reflected as 49 percent</p> <p>12 Highland and 51 percent HCRE, correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And for Brandywine -- huh. Unless</p> <p>15 I'm missing something, this doesn't even</p> <p>16 address the LLC interests.</p> <p>17 MR. MARTIN: That's one of the</p> <p>18 reasons I was asking.</p> <p>19 MR. BROWN: Pardon me?</p> <p>20 MR. MARTIN: That's one of the</p> <p>21 reasons I was asking.</p> <p>22 MR. BROWN: Yeah. Yeah.</p> <p>23 MR. MARTIN: I know you're trying</p> <p>24 to make your record and I'm not trying</p> <p>25 to interrupt you.</p>	<p style="text-align: right;">Page 55</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. BROWN: Thank you. I</p> <p>3 appreciate it.</p> <p>4 BY MR. BROWN:</p> <p>5 Q. So Brandywine just doesn't -- in</p> <p>6 this chart, the LLC is not even shown,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Scroll to the next one, please.</p> <p>10 This one, which is</p> <p>11 Glenview Reserve, with respect to the LLC, it</p> <p>12 reflects the same ownership percentage,</p> <p>13 49 percent in Highland and 51 percent in</p> <p>14 HCRE, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Scroll down, please.</p> <p>17 And, again, this is for Andros</p> <p>18 Isles.</p> <p>19 And with respect to the LLC, it is</p> <p>20 again reflecting and repeating the same</p> <p>21 ownership percentage of 49 percent in</p> <p>22 Highland and 51 percent in HCRE. Correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Again, this is Arborwalk.</p> <p>25 And with respect to the LLC, the</p>
<p style="text-align: right;">Page 56</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 same ownership percentages are reflected for</p> <p>3 Highland and HCRE as on the prior charts,</p> <p>4 correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. For Walker Ranch, which is the next</p> <p>7 page, the same ownership percentages are</p> <p>8 reflected for the LLC as on the prior charts,</p> <p>9 correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And with respect to Towne Crossing,</p> <p>12 the next page, the same ownership percentages</p> <p>13 are reflected in the LLC, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And with respect to the next page,</p> <p>16 West Place, the same LLC percentages are</p> <p>17 reflected for Highland and HCRE, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And the next page, Vista Ridge, the</p> <p>20 same LLC percentages -- the same ownership</p> <p>21 percentages are reflected for Highland as</p> <p>22 HCRE as on the prior charts, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Next page, which is Hidden Lake.</p> <p>25 With respect to the LLC, the same</p>	<p style="text-align: right;">Page 57</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 ownership percentages are reflected for HCRE</p> <p>3 and Highland as on the prior charts, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. The next page, Arbolita.</p> <p>6 With respect to the LLC, the same</p> <p>7 ownership percentages are reflected, correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Next page, Fairways.</p> <p>10 With respect to the LLC, the same</p> <p>11 ownership percentages are reflected, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. The next page, with respect to</p> <p>14 Grand Oasis, it's the same ownership</p> <p>15 percentages as on the prior charts, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And with respect to</p> <p>18 Summers Landing, there is no indication</p> <p>19 here -- no reflection of the LLC in the</p> <p>20 chart; is that correct?</p> <p>21 A. Yes, sir. That's correct.</p> <p>22 Q. Okay. I think that takes us</p> <p>23 through it. And I apologize for dragging</p> <p>24 everybody through that, but your counsel is</p> <p>25 correct that they're not all -- they did not</p>



<p style="text-align: right;">Page 58</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 all reflect the ownership interests in the 3 LLC. 4 But is it correct to say that, with 5 respect to Schedule 3.15 of the 6 Loan Agreement, and the charts reflecting the 7 ownership interests of the subsidiaries that 8 do address the ownership interest in the LLC, 9 they all identically reflect that the 10 ownership interest is 41 percent -- 11 49 percent in Highland and 51 percent in 12 HCRE? 13 A. Yes, sir. 14 Q. And that's consistent with the 15 ownership interest that is set forth in the 16 LLC Agreement, correct? 17 A. Correct. 18 Q. Did you become familiar with the -- 19 with Schedule 3.15 of the Loan Agreement 20 before or after your designation as the -- as 21 Wick Phillips' Rule 30(b)(6) witness? 22 A. After. 23 Q. Did Wick Phillips have any 24 communications with HCRE concerning the 25 charts we just went through that comprise</p>	<p style="text-align: right;">Page 59</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Schedule 3.15 of the Loan Agreement? 3 MR. MARTIN: Objection, form. 4 A. Yes, sir. 5 BY MR. BROWN: 6 Q. And with whom did Wick Phillips 7 have those communications? 8 A. I don't recall specific names, but 9 different people within both NexPoint and 10 from the in-house team at Highland. 11 Q. And how do you -- what is the 12 distinction between NexPoint and Highland in 13 Wick Phillips' mind? 14 A. The NexPoint distinction would be 15 we've always been hired in the real estate 16 silo, only operating on sort of what I would 17 call the property level. 18 And then, sort of like when we're 19 looking at the structure charts in 3.15, once 20 you get up to really the 49/51 percent 21 distinction, Mr. Brown, that you were talking 22 about, that structuring is beyond the scope 23 of our representation and typically goes to 24 in-house or a different law firm handling 25 that side of things for that portion of the</p>
<p style="text-align: right;">Page 60</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 company. 3 Q. Did Highland have separate counsel 4 in connection with the Loan Agreement? 5 A. I don't know. 6 Q. So you, testifying here on behalf 7 of Wick Phillips, you don't know any of the 8 names of the individuals with whom 9 Wick Phillips communicated relating to the 10 HCRE representation; is that correct? 11 MR. MARTIN: Objection, form. 12 A. No. That's -- I don't think that's 13 exactly what I said. We've already gone over 14 a few of the Wick Phillips contacts at 15 NexPoint, Matt McGraner and Matt Goetz. 16 BY MR. BROWN: 17 Q. Yes. 18 A. In reviewing some of the 19 correspondence in preparation for this 20 deposition, yes, sir, there are some other 21 names that I'm not familiar with. My partner 22 at the time would have been having those 23 communications within the context of this 24 transaction. 25 So there's a Paul Broaddus and a</p>	<p style="text-align: right;">Page 61</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 handful of other names that I believe had a 3 role in creating some of these charts and 4 passing them along to us, but I don't recall 5 their specific names. 6 Q. Okay. So, again, we'll get to 7 those emails and so we can follow up on that. 8 But other than Mr. Geotz, 9 Mr. McGraner, Mr. Chang, and Mr. Broaddus, 10 did Wick Phillips have communications with 11 any other individuals that were 12 representatives of HCRE in connection with 13 the Loan Agreement? 14 MR. MARTIN: Objection, form. 15 A. Not that I'm aware of. 16 BY MR. BROWN: 17 Q. Okay. Did Wick Phillips have 18 communications with any individuals that were 19 representatives of Highland in connection 20 with the Loan Agreement other than Mr. Goetz, 21 Mr. -- well, strike that. 22 Did Wick Phillips have any 23 communications with representatives of 24 Highland in connection with the 25 Loan Agreement?</p>

<p style="text-align: right;">Page 62</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. MARTIN: Objection, form.</p> <p>3 A. I think with Mr. Broaddus and</p> <p>4 probably a handful of other folks in</p> <p>5 connection with some of these charts and</p> <p>6 structuring.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. When it spoke to, for example,</p> <p>9 Mr. Broaddus, who was communicating on behalf</p> <p>10 of Highland, was there another counsel</p> <p>11 involved for Highland in the communications</p> <p>12 that Wick Phillips had for Mr. Broaddus?</p> <p>13 A. I believe in connection with some</p> <p>14 of the structuring, yes, sir.</p> <p>15 Q. And who would that have been?</p> <p>16 A. I believe it was Hunton &amp; Williams.</p> <p>17 Q. So you believe that</p> <p>18 Hunton &amp; Williams was involved in the</p> <p>19 representation of Highland in connection with</p> <p>20 the Loan Agreement?</p> <p>21 MR. MARTIN: Objection, form.</p> <p>22 A. In connection with the</p> <p>23 organizational structure, yes, sir.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Are you sure you're not conflating</p>	<p style="text-align: right;">Page 63</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 that with the representation of Highland in</p> <p>3 connection with the LLC?</p> <p>4 A. No, sir. I mean -- no, I guess, is</p> <p>5 the short answer.</p> <p>6 Q. And are you aware of any writings</p> <p>7 that reflect that the Hunton firm represented</p> <p>8 Highland in connection with the</p> <p>9 Loan Agreement?</p> <p>10 A. I'm not aware of those.</p> <p>11 Q. And what do you base your</p> <p>12 conclusion on that the Hunton firm</p> <p>13 represented Highland in connection with the</p> <p>14 Loan Agreement?</p> <p>15 A. Because Hunton is typically the</p> <p>16 Highland tax counsel that provides the</p> <p>17 organizational charts that are attached to</p> <p>18 the Loan Agreement.</p> <p>19 Q. And do you have independent -- do</p> <p>20 you have knowledge -- did the organizational</p> <p>21 charts that comprise Schedule 3.15 of the</p> <p>22 Loan Agreement, did they come from Hunton?</p> <p>23 MR. MARTIN: Objection, form.</p> <p>24 A. They came from Highland. So beyond</p> <p>25 that, I'm not sure.</p>
<p style="text-align: right;">Page 64</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 BY MR. BROWN:</p> <p>3 Q. Okay. So are you aware of any</p> <p>4 communications that Wick Phillips had with</p> <p>5 Hunton directly in connection with the</p> <p>6 Loan Agreement?</p> <p>7 A. No, sir.</p> <p>8 Q. So you have no independent</p> <p>9 knowledge -- you have no knowledge, do you,</p> <p>10 that Hunton represented Highland in</p> <p>11 connection with the Loan Agreement, do you?</p> <p>12 MR. MARTIN: Objection, form.</p> <p>13 A. I don't know. Section 3.15 is part</p> <p>14 of the Loan Agreement. So that's where I'm</p> <p>15 getting a little hung up, I suppose.</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Okay. And what part of Section --</p> <p>18 of Schedule 3.15 leads you to believe that</p> <p>19 Hunton represented Highland in connection</p> <p>20 with the Loan Agreement?</p> <p>21 MR. MARTIN: Objection, form.</p> <p>22 A. I guess it's just a little bit of</p> <p>23 deduction because Wick Phillips did not. So</p> <p>24 it's either Highland in-house or their</p> <p>25 typical tax counsel, which is Hunton, or DST</p>	<p style="text-align: right;">Page 65</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 counsel or REIT counsel.</p> <p>3 So I can't say for certain that</p> <p>4 it's Hunton, but I can say for certain that</p> <p>5 it's not Wick Phillips.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. So you can say -- I'm sorry. You</p> <p>8 can say for certain that what is not</p> <p>9 Wick Phillips?</p> <p>10 A. That we did not -- we had no role</p> <p>11 in these org charts, which you're saying did</p> <p>12 Hunton represent Highland in connection with</p> <p>13 the Loan Agreement.</p> <p>14 And I'm saying, it looks like it</p> <p>15 because these org charts were not prepared by</p> <p>16 Wick Phillips, so somebody represented</p> <p>17 Highland in connection with the</p> <p>18 Loan Agreement, to answer that question.</p> <p>19 Q. But you're speculating that it was</p> <p>20 Hunton, correct?</p> <p>21 A. That -- I just said I don't know</p> <p>22 for certain that it was Hunton.</p> <p>23 Q. You actually -- as you sit here</p> <p>24 today, you have no idea whether it was Hunton</p> <p>25 or whether any firm was involved in preparing</p>

<p style="text-align: right;">Page 66</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 those charts, do you? 3 A. That's correct. 4 Q. Okay. Can you describe the 5 conversations that Wick Phillips had with 6 HCRE concerning the organization charts that 7 are attached to -- as Schedule 3.15 to the 8 Loan Agreement? 9 A. Generally, yes. To get an 10 understanding of what the structure was for 11 each of the properties so that we could 12 accurately communicate that to the lender. 13 Q. Okay. Can you give me any more 14 detail as to what those communications were 15 beyond what you just testified to? 16 A. You know, it would -- sort of like 17 we had just talked about, it would be whether 18 it was going to be part of the restructure, a 19 DST structure, you know, for purposes of 20 communicating which buckets those would fall 21 in, whether it's KeyBank or Freddie. 22 Q. Are you aware that the 23 Loan Agreement contained representations and 24 warranties? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 67</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Q. And are you aware that those 3 representations and warranties on multiple 4 occasions included reps and warranties by the 5 borrowers relating to the subsidiaries? 6 A. Yes, sir. 7 Q. Did Wick Phillips perform any 8 diligence on behalf of any of its clients in 9 connection with the Loan Agreement to 10 determine if the representations and 11 warranties in the Loan Agreement that related 12 to the subsidiaries were true and accurate? 13 A. Diligence as far as asking the 14 client if their org chart is accurate? Yes. 15 Q. And what did it do to diligence the 16 reps and warranties and, in particular, the 17 reps and warranties relating to the 18 subsidiaries as they're reflected on 19 Schedule 3.15? 20 A. Confirm with the people that 21 prepared the org charts. 22 Q. So what were those communications? 23 What was the substance of those 24 communications? 25 A. I don't know.</p>
<p style="text-align: right;">Page 68</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Q. Okay. Do you know who 3 Wick Phillips had these discussions relating 4 to diligencing the reps and warranties 5 relating to the subsidiaries? 6 A. Yes. At the time it would have 7 been primarily D.C. Sauter. And then -- 8 Q. Could you spell that? 9 A. Sure. It's just the initials D, 10 like dog, C, like Charles. 11 Q. Yep. 12 A. Sauter, S-a-u-t-e-r. 13 Q. And who was D.C. Sauter a 14 representative of, what entity? 15 A. He was a partner at Wick Phillips. 16 Q. Oh, okay. So he was the 17 Wick Phillips lawyer that would have 18 diligenced -- done the underlying work to 19 diligence the reps and warranties relating to 20 the subsidiaries, correct? 21 A. Yes, sir. 22 Q. Did you speak to him in connection 23 with your preparation for your testimony as 24 the designated witness of Wick Phillips? 25 A. Yes, sir. We spoke yesterday.</p>	<p style="text-align: right;">Page 69</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Q. Okay. And so on behalf of 3 Wick Phillips, who did Wick Phillips speak to 4 in connection with diligencing the reps and 5 warranties in the Loan Agreement relating to 6 the subsidiaries? 7 MR. MARTIN: Objection, form. 8 A. It would have been the laundry list 9 of folks we've been over, whether it was 10 Paul Broadbuss, Freddy Chang, Matt McGraner, 11 someone within the NexPoint or Highland team 12 that had created those charts and could tell 13 us that they were accurate. 14 BY MR. BROWN: 15 Q. Okay. It's your understanding that 16 Wick Phillips made a determination that the 17 charts that comprise Schedule 3.15 and the 18 reps and warranties in the Loan Agreement 19 relating to those charts were true and 20 accurate, correct? 21 A. Yes, sir. 22 Q. And do you know if Wick Phillips 23 had an understanding when it did this due 24 diligence and spoke to that group of people 25 you had identified earlier, Goetz, McGraner,</p>

<p style="text-align: right;">Page 70</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Chang, and Broadus, I believe were the</p> <p>3 universe; is that correct?</p> <p>4 MR. MARTIN: Objection, form.</p> <p>5 A. Yes, sir.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Okay. So of those four people,</p> <p>8 did -- how did Wick Phillips determine what</p> <p>9 hat those individuals were wearing when it</p> <p>10 spoke to them, i.e., were they speaking on</p> <p>11 behalf of HCRE or were they speaking on</p> <p>12 behalf of Highland or were they speaking on</p> <p>13 behalf of some other borrower?</p> <p>14 MR. MARTIN: Objection, form.</p> <p>15 BY MR. BROWN:</p> <p>16 Q. Do you understand the question,</p> <p>17 Mr. Wills?</p> <p>18 A. Yes. I can answer the question.</p> <p>19 The Matt McGraner, Matt Goetz part</p> <p>20 of things is NexPoint. So they should</p> <p>21 communicate to us from the borrower level --</p> <p>22 I'm sorry, the SE Multifamily Holdings LLC</p> <p>23 level down, as we got down to the property</p> <p>24 level.</p> <p>25 And then Paul Broadus, on that</p>	<p style="text-align: right;">Page 71</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 side of things on the Highland level, is what</p> <p>3 handles the chain up, or the chart up. And</p> <p>4 so we would rely on their understanding of</p> <p>5 the chart and the accuracy of that chart.</p> <p>6 Q. Okay. You said McGraner was</p> <p>7 speaking on behalf of NexPoint; is that</p> <p>8 correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And who else did you say was</p> <p>11 speaking on behalf of NexPoint?</p> <p>12 A. Matt Goetz.</p> <p>13 Q. Okay. Do you know whether McGraner</p> <p>14 was also a representative of Highland or had</p> <p>15 any affiliation with Highland?</p> <p>16 A. I don't.</p> <p>17 Q. What about Goetz? Do you know if</p> <p>18 he had any affiliation with Highland?</p> <p>19 A. I don't know.</p> <p>20 Q. And Wick Phillips understood, did</p> <p>21 it not, that the lender under the</p> <p>22 Loan Agreement would be relying on the reps</p> <p>23 and warranties made by the borrower, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And Wick Phillips understood that</p>
<p style="text-align: right;">Page 72</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 an incorrect or false representation or</p> <p>3 warranty was an event of default under the</p> <p>4 Loan Agreement, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And the event of default could lead</p> <p>7 to acceleration of the amounts due, correct?</p> <p>8 A. Yes, sir.</p> <p>9 MR. BROWN: Can we attach -- or can</p> <p>10 we mark Exhibit D.</p> <p>11 (Email chain, "RE: Project Unicorn</p> <p>12 - Final Org Charts," with</p> <p>13 attachments, marked as Exhibit D.)</p> <p>14 MR. BROWN: Okay. So can we scroll</p> <p>15 down to the first email in the chain?</p> <p>16 Okay. That's the one I want to focus on</p> <p>17 for right now.</p> <p>18 BY MR. BROWN:</p> <p>19 Q. Okay. So Mr. Wills, focusing on</p> <p>20 the email that's on the screen, it's the</p> <p>21 Monday, September 17, 2018, email that is</p> <p>22 sent by Rachel Sam at 4:21 p.m.</p> <p>23 A. Uh-huh.</p> <p>24 MR. MARTIN: You need to say "yes"</p> <p>25 or "no."</p>	<p style="text-align: right;">Page 73</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. BROWN:</p> <p>4 Q. Okay. Have you seen that email</p> <p>5 before?</p> <p>6 A. Yes.</p> <p>7 Q. Who is Rachel Sam?</p> <p>8 A. She is an attorney at</p> <p>9 Wick Phillips.</p> <p>10 Q. Okay. This email was sent by</p> <p>11 Rachel Sam?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And you have seen it before?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Before or after your designation?</p> <p>16 A. After.</p> <p>17 Q. Okay. And did you review this</p> <p>18 email as part of your preparation to testify</p> <p>19 today?</p> <p>20 A. Yes, sir.</p> <p>21 Q. So this email, the caption is</p> <p>22 "Final Org Charts."</p> <p>23 And if we scroll down further to</p> <p>24 the attachments, they are either -- and I</p> <p>25 can't tell, but they are either -- this is</p>

<p style="text-align: right;">Page 74</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 this first email, says -- I'm sorry, the</p> <p>3 first attachment refers to Governors Green.</p> <p>4 And this is either one of the</p> <p>5 charts attached to Schedule 3.15 in the</p> <p>6 Loan Agreement or some prior and very similar</p> <p>7 version to it.</p> <p>8 Would you say that's accurate?</p> <p>9 MR. MARTIN: Objection, form.</p> <p>10 A. Yes, sir.</p> <p>11 BY MR. BROWN:</p> <p>12 Q. And, again, on the org chart, as</p> <p>13 with all of the org charts attached as</p> <p>14 Schedule 3.15 that contain a reference to the</p> <p>15 LLC, this org chart provides that the</p> <p>16 ownership interests are 51 percent HCRE and</p> <p>17 49 percent Highland, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And if we could scroll down to the</p> <p>20 next org chart.</p> <p>21 Again, this one is Stoney Ridge.</p> <p>22 And would you agree that this is</p> <p>23 either the same chart that's attached to --</p> <p>24 as Schedule 3.15 or a virtually identical</p> <p>25 version and certainly identical with respect</p>	<p style="text-align: right;">Page 75</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 to the ownership interests in the LLC?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Scroll down one more chart, please.</p> <p>5 With respect to the attachment to</p> <p>6 Rachel Sam's email regarding Oak Mill</p> <p>7 Apartments, again, would you agree that this</p> <p>8 is either identical to the schedule attached</p> <p>9 as -- to the chart attached for -- to</p> <p>10 Schedule 3.15 or a virtually identical</p> <p>11 version, and certainly identical with respect</p> <p>12 to the reflection of the ownership interests</p> <p>13 in the LLC?</p> <p>14 A. Yes, sir.</p> <p>15 MR. BROWN: Okay. Scroll down</p> <p>16 again. I think that's the end. Yeah.</p> <p>17 Okay.</p> <p>18 Let's go back to the email, the</p> <p>19 September 17 email.</p> <p>20 BY MR. BROWN:</p> <p>21 Q. Okay. So in her email, Ms. Sam is</p> <p>22 writing or emailing to, if you look up to the</p> <p>23 "To" line, Matt McGraner, who you've</p> <p>24 referenced before. There are two -- there's</p> <p>25 an entry for him showing a Highland Capital</p>
<p style="text-align: right;">Page 76</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 email address, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And you had previously testified</p> <p>5 that you believed he was a representative of</p> <p>6 NexPoint, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Does this refresh your recollection</p> <p>9 or change your conclusions as to whether or</p> <p>10 not he was also a representative of Highland?</p> <p>11 MR. MARTIN: Objection, form.</p> <p>12 A. No, sir.</p> <p>13 BY MR. BROWN:</p> <p>14 Q. Okay. Do you have any idea why</p> <p>15 Mr. McGraner has a Highland Capital email</p> <p>16 address?</p> <p>17 A. No, sir.</p> <p>18 Q. And, again, it's also to Mr. Goetz,</p> <p>19 who you also, I believe, testified that</p> <p>20 Wick Phillips was communicating with on</p> <p>21 behalf of NexPoint.</p> <p>22 He also has a Highland Capital</p> <p>23 email address, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And does that change your</p>	<p style="text-align: right;">Page 77</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 conclusion or refresh your recollection as to</p> <p>3 whether or not Mr. Goetz was also a</p> <p>4 representative of Highland Capital or</p> <p>5 Highland?</p> <p>6 A. No, sir. No, sir.</p> <p>7 Q. I want to make sure the record is</p> <p>8 correct. I meant to just say Highland</p> <p>9 because we've defined the Debtor as Highland.</p> <p>10 Does this refresh your recollection</p> <p>11 or change your conclusion as to whether</p> <p>12 Mr. Goetz was a representative of Highland?</p> <p>13 A. No, sir.</p> <p>14 Q. Okay. And do you know who</p> <p>15 Bonner McDermott is?</p> <p>16 A. Yes, sir. I believe he is an</p> <p>17 analyst with Mr. Goetz and Mr. McGraner.</p> <p>18 Q. And do you know whether or not he</p> <p>19 is a representative of Highland or some other</p> <p>20 entity?</p> <p>21 A. I do not know.</p> <p>22 Q. You also had referred to</p> <p>23 Mr. Broadus, who is another recipient of</p> <p>24 this email, also with a Highland Capital</p> <p>25 email address?</p>

<p style="text-align: right;">Page 78</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Yes, sir.</p> <p>3 Q. Do you know whether Mr. Broadus is</p> <p>4 a representative of Highland?</p> <p>5 A. I believe that's correct.</p> <p>6 Q. Okay. And also Freddy Chang, who I</p> <p>7 believe you also referenced, with a</p> <p>8 Highland Capital email address.</p> <p>9 Do you know who Freddy Chang is a</p> <p>10 representative of?</p> <p>11 A. I believe he's NexPoint, some sort</p> <p>12 of in-house counsel role.</p> <p>13 Q. Okay. And do you know why he has a</p> <p>14 Highland Capital email address?</p> <p>15 A. No, sir.</p> <p>16 Q. Okay. And the cc is to D.C. Sauter</p> <p>17 of Wick Phillips, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And other than D.C. Sauter, there</p> <p>20 are no other outside lawyers that are on --</p> <p>21 that are recipients of this email, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. So this email by Rachel Sam, the</p> <p>24 Wick Phillips lawyer says:</p> <p>25 "I made a couple of clean up</p>	<p style="text-align: right;">Page 79</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 changes to the DST org charts and am</p> <p>3 waiting for signoff from</p> <p>4 Baker McKenzie. Once I hear back from</p> <p>5 Baker, I will circulate those updated</p> <p>6 org charts."</p> <p>7 So you, I believe, testified</p> <p>8 earlier that Wick Phillips didn't make any</p> <p>9 changes to the org charts. Does this refresh</p> <p>10 your recollection as to whether or not</p> <p>11 Wick Phillips made changes to the org charts?</p> <p>12 A. Yeah. It looks like Rachel may</p> <p>13 have cleaned up some typos that she got from</p> <p>14 DST counsel.</p> <p>15 Q. Does this refer to typos?</p> <p>16 A. "Clean up" is what I would</p> <p>17 interpret as typo.</p> <p>18 Q. You're assuming that clean up means</p> <p>19 typo?</p> <p>20 A. Yes, sir.</p> <p>21 Q. But you don't know, do you?</p> <p>22 A. I do not.</p> <p>23 Q. So, for example, you don't know</p> <p>24 whether the changes related to substance, do</p> <p>25 you?</p>
<p style="text-align: right;">Page 80</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. MARTIN: Objection, form.</p> <p>3 A. Well, I do because we are not DST</p> <p>4 counsel. So we would not be making material</p> <p>5 changes to the DST org chart.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Whether DST -- Delaware Statutory</p> <p>8 Trust is what DST means, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And the reason you say you know</p> <p>11 that the changes were, quote, "typos" is</p> <p>12 because -- tell me again?</p> <p>13 A. Well, they're attached and we just</p> <p>14 went through and said they're substantially</p> <p>15 similar to what's in the Loan Agreement.</p> <p>16 And quite frankly, we don't have</p> <p>17 DST counsel here. We don't have that</p> <p>18 capability. So we wouldn't -- we wouldn't be</p> <p>19 making those changes.</p> <p>20 Q. Okay. But again, you're</p> <p>21 speculating, correct? You don't know.</p> <p>22 MR. MARTIN: Objection, form.</p> <p>23 BY MR. BROWN:</p> <p>24 Q. You don't know what changes Rachel</p> <p>25 made, do you?</p>	<p style="text-align: right;">Page 81</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. No, sir.</p> <p>3 MR. BROWN: Okay. Can we scroll up</p> <p>4 to the next email.</p> <p>5 BY MR. BROWN:</p> <p>6 Q. Again, this is a -- appears to be</p> <p>7 the next email on the chain. It's just under</p> <p>8 an hour later, at 5:16 p.m., to the same</p> <p>9 group with a copy to D.C. Sauter, and it's</p> <p>10 Rachel again here saying:</p> <p>11 "Just wanted to follow up on the</p> <p>12 org charts. Let us know if you have</p> <p>13 any comments or if these are okay to</p> <p>14 submit to Freddie."</p> <p>15 Does that -- have you seen that</p> <p>16 email before?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And is that an email that</p> <p>19 Rachel Sam of Wick Phillips sent to all the</p> <p>20 people reflected on the "To" and "cc" line?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. Let's scroll up to the next</p> <p>23 email. And this is -- have you seen this</p> <p>24 email before?</p> <p>25 It's the September 18, 2018, email</p>

<p style="text-align: right;">Page 82</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 from Freddy Chang with a Highland Capital 3 email address, to Rachel Sam, again, 4 regarding the final org charts. And it's 5 Freddy Chang asking, "Are the DST org charts 6 ready to go?" Asking Rachel. 7 Have you seen this before? 8 A. Yes, sir. 9 Q. And is this an email that was 10 received by Wick Phillips? 11 A. Yes, sir. 12 Q. Okay. Next email. 13 This appears to be Rachel Sam's 14 response to Freddy Chang's prior email at 15 7:45. It's like seven minutes later, at 16 7:52, from Rachel Sam to Freddy Chang, 17 copying D.C. Sauter. 18 Have you seen this email before? 19 A. Yes, sir. 20 Q. And was this email sent by 21 Wick Phillips? 22 A. Yes, sir. 23 Q. And in response to Mr. Chang's 24 inquiry to Rachel Sam if the DST org charts 25 were ready to go, Rachel says:</p>	<p style="text-align: right;">Page 83</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 "The only remaining question is 3 whether we will be converting or 4 merging the borrower-level DST owner 5 entities. The org charts currently 6 reflect that the owner entities may 7 be converted." 8 Is that a -- is that a substantive 9 question regarding the structure of the 10 subsidiaries, in your opinion? 11 A. A substantive question from -- 12 Q. Yeah. I mean, you said all that 13 was done was typos and passing on, you know, 14 information that other people provided. You 15 said that that was all Wick Phillips did. 16 But here, this email seems to ask a 17 substantive question regarding converting or 18 merging borrower-level DST owner entities. 19 MR. MARTIN: Objection, form. 20 A. Yes, sir. Again, we're at this 21 point a conduit between Baker McKenzie, DST 22 counsel, REIT counsel, and -- Rachel is 23 simply reiterating the outstanding item for 24 Baker McKenzie to complete on the org chart 25 so we can accurately deliver that to Freddie</p>
<p style="text-align: right;">Page 84</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Mac. 3 BY MR. BROWN: 4 Q. Is Baker McKenzie on any of these 5 emails? 6 A. Yes, sir. The first one we looked 7 at. 8 Q. The initiating email by Rachel Sam 9 of September 17, 2018? 10 A. Yes, sir. 11 MR. BROWN: Okay. Let's scroll -- 12 I must be missing something. Let's 13 scroll to the bottom. There. That 14 email. 15 BY MR. BROWN: 16 Q. Can you point to the Baker McKenzie 17 recipient for me? 18 A. No. I'm sorry. I may have been 19 speaking past you. I'm referencing the 20 substance of the email. 21 Q. Oh, I see. Okay. "I'm waiting for 22 signoff from Baker McKenzie." 23 Okay. I got it. 24 And who did Baker McKenzie 25 represent?</p>	<p style="text-align: right;">Page 85</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 A. I'm not certain. I just know 3 they're DST counsel on the Highland side. 4 Q. Delaware Statutory Trust counsel; 5 it's your understanding that that's who they 6 represented? 7 A. Yes, sir. 8 (Telephonic interruption.) 9 Q. Okay. Let's go back to where we 10 were, the September 18 email, "The only 11 remaining question." 12 Okay. Scroll up one email. Okay. 13 And this is a September 18 email, again, one 14 minute after Rachel's email at 7:52, from 15 Freddie Chang to Rachel Sam copied to 16 D.C. Sauter. And it's Rachel Sam saying: 17 "Thanks. Are you working on the 18 REIT share acquisition org charts?" 19 And the only question I have for 20 you on that, Mr. Wills, is did Wick Phillips 21 receive that email? 22 A. Yes, sir. 23 Q. Okay. And scroll up to 24 Rachel Sam's response. 25 Rachel Sam responds four minutes</p>

<p style="text-align: right;">Page 86</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 later, at 7:57, to the inquiry by 3 Freddie Chang: 4 "Yes, the current versions of 5 those" -- being the REIT share 6 acquisition charts -- "are attached. 7 Paul has previously reviewed and 8 approved these, but let us know if you 9 have any comments." 10 So did Wick Phillips receive this 11 email? 12 A. Yes. 13 Q. Do you know who Paul is? 14 A. I believe Paul Broadus. 15 MR. BROWN: Okay. So it's now 16 about an hour from the last time we took 17 a break, and I would like to take a 18 five-minute break, if that's okay with 19 everybody. 20 MR. MARTIN: It's your deposition. 21 Sure. 22 MR. BROWN: All right. Let's 23 reconvene in about five minutes. 24 MR. MARTIN: Okay. Thank you. 25 (Recess taken.)</p>	<p style="text-align: right;">Page 87</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 MR. BROWN: So let's get Exhibit D 3 back on the screen. And let's go to the 4 bottom of the initiating email. 5 BY MR. BROWN: 6 Q. So, again, Mr. Wills, I just want 7 to focus on these emails in particular, as 8 opposed to more generally, which I have 9 discussed in more general terms. 10 But Rachel Sam is communicating 11 here with the people on the "To" line: 12 Matt McGraner with the Highland Capital email 13 address, Matt Goetz with the Highland Capital 14 email address, Bonner McDermott with the 15 Highland Capital email address, Paul Broadus 16 with the Highland Capital email address, and 17 Freddy Chang with the Highland Capital email 18 address. 19 Does Wick Phillips have knowledge 20 of the capacity that it was communicating 21 with these individuals in? 22 In other words, who were these 23 individuals representing -- who were these 24 individuals representing in these 25 communications, which entities?</p>
<p style="text-align: right;">Page 88</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 And I'm interested in Wick 3 Phillips' knowledge and not your speculation. 4 A. Sure. So from our knowledge, 5 Matt McGraner, Geotz, Bonner McDermott, and 6 Freddy Chang are NexPoint. Paul Broadus is 7 Highland. And there's a shared services 8 agreement between the two companies, and so 9 they're operating somewhat together. 10 Q. In other words, Highland and 11 NexPoint are operating together; is that what 12 you mean? 13 A. Yes, sir. 14 Q. And are any of these individuals 15 that Rachel Sam was communicating with in 16 these emails, are they representatives of 17 HCRE, the lead borrower? 18 A. I don't know. 19 Q. Would Wick Phillips have been 20 communicating with the lead borrower in 21 connection with its communications relating 22 to the Loan Agreement? 23 A. I would assume so. 24 Q. Do you know who Mark Patrick was or 25 is?</p>	<p style="text-align: right;">Page 89</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 A. I believe he's an attorney with 3 Highland. 4 Q. Do you know why he wasn't included 5 on these emails? 6 A. No, sir. 7 Q. And this email string, which is 8 Exhibit D, this relates to Wick Phillips' 9 work on the Loan Agreement, correct? 10 A. Yes, sir. 11 Q. And did these emails reflect some 12 of the work that Wick Phillips did in 13 connection with the Loan Agreement? 14 A. Yes, sir. 15 Q. Other than what's reflected in 16 these emails, do you know what other work 17 Wick Phillips did relating to the org charts 18 that constitute Schedule 3.15 of the 19 Loan Agreement? 20 MR. MARTIN: Objection, form. 21 A. Yes. I mean, just as part of the 22 legal diligence in connection with, you know, 23 a loan checklist, making sure that the org 24 charts that we receive and are delivering 25 back to the lender are approved by the</p>



<p style="text-align: right;">Page 90</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 business parties, and then, therefore, we can  3 get them to Freddie or KeyBank or whomever  4 needs to have those and then have them  5 checked off of the diligence portion of the  6 checklist.  7 BY MR. BROWN:  8 Q. In connection with the org charts  9 that show up as Schedule 3.15 of the  10 Loan Agreement, who was Wick Phillips taking  11 instructions from on behalf of the borrowers?  12 A. I think primarily the parties you  13 see here, both from The NexPoint side and  14 Mr. Broaddus.  15 Q. On the Highland side?  16 A. Yes, sir.  17 Q. Other than this email, are you  18 aware of other -- I'm sorry. Other than this  19 email string, are you aware of other  20 communications between Wick Phillips and any  21 of the borrowers concerning the org charts?  22 A. No, sir.  23 MR. BROWN: Can we put Exhibit E up  24 on the screen, please.  25 (Email chain, "RE: Unicorn - DSTs",</p>	<p style="text-align: right;">Page 91</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 marked as Exhibit E.)  3 BY MR. BROWN:  4 Q. Okay. Exhibit E appears to be an  5 August 18, 2018 [sic] email from  6 Paul Broaddus; is that correct?  7 A. Yes, sir.  8 Q. And have you seen this email  9 before?  10 A. Yes, sir.  11 Q. Before or after your designation?  12 A. After.  13 Q. Did you review it in connection  14 with your preparation for your testimony  15 today?  16 A. Yes, sir.  17 Q. And it appears that there are a  18 number of recipients to this. One of them is  19 D.C. Sauter; is that right?  20 A. Yes, sir.  21 Q. So Wick Phillips did receive this  22 email from Paul Broaddus, correct?  23 A. Yes, sir.  24 Q. And Paul Broaddus is -- as you have  25 previously testified, was a representative of</p>
<p style="text-align: right;">Page 92</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 Highland in connection with Wick Phillips'  3 role representing the borrowers in the  4 Loan Agreement, correct?  5 A. Yes, sir.  6 Q. And the initiating email of  7 July 27, the first email in the string, which  8 is the second email on Exhibit E,  9 indicates -- it says:  10 "Hi. Please see attached as  11 discussed for the basic DST charts.  12 Please note the open items.  13 "Should we have a call next week?  14 "Want to specifically discuss the  15 items that will need to be closed  16 out sooner rather than later.  17 "Thanks. Paul."  18 So, again, did Wick Phillips  19 receive this email?  20 A. Yes, sir. It looks that way.  21 Q. As well as the attachments,  22 correct?  23 And maybe we should look at the  24 attachments too. So if we could scroll  25 further.</p>	<p style="text-align: right;">Page 93</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 Okay. So let's -- the first page  3 of the attachment says "Open items:  4 Economics/ownership of JV LLC."  5 Do you know what that refers to?  6 A. Not specifically, no.  7 Q. Okay. Could we scroll to the next  8 page of the attachment to Paul Broaddus'  9 email. No. We can --  10 Have you seen the attachments  11 before, Mr. Wills?  12 A. Yes, sir.  13 Q. Okay. Let's scroll to the next  14 page.  15 Okay. This attachment reverts to  16 the ownership interests of a JV -- of the JV  17 LLC, which was referred to in the first  18 document as being -- to be determined, but  19 approximately 51 percent for Partner 1 and  20 49 percent for Partner 2.  21 Do you know whether this is  22 referring to the LLC, which is the subject of  23 the, I think, Exhibit D in our case here?  24 It's the SE Multifamily LLC Agreement.  25 Is that what this refers to?</p>

<p style="text-align: right;">Page 94</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. That's what it looks like. Yes,</p> <p>3 sir.</p> <p>4 Q. Yeah. And just to go back and</p> <p>5 trace the history, the SE Multifamily</p> <p>6 Holdings LLC Agreement was dated August 23.</p> <p>7 The email that this was attached to is dated</p> <p>8 August 1. So this would have been -- this</p> <p>9 email would have been sent prior to the</p> <p>10 original LLC Agreement.</p> <p>11 And this would have been the</p> <p>12 discussions about the formation of it,</p> <p>13 correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Can we scroll to the next</p> <p>16 page.</p> <p>17 And, again, this chart called DST</p> <p>18 Properties LLC reflects ownership interest of</p> <p>19 Partner 1 at 51 percent and Partner 2 at</p> <p>20 49 percent for the LLC to be formed, correct,</p> <p>21 which subsequently we learned was the SE</p> <p>22 Multifamily Holdings LLC Agreement, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. Can we scroll forward again?</p> <p>25 Again, this is another chart that</p>	<p style="text-align: right;">Page 95</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 refers to the ownership interests of the</p> <p>3 to-be-formed LLC Agreement, ultimately which</p> <p>4 became SE Multifamily Holdings LLC, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And it reflects the same ownership</p> <p>7 interests as we saw in Schedule 3.15 to the</p> <p>8 Loan Agreement and in the LLC Agreement,</p> <p>9 correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Next chart.</p> <p>12 That's not sufficiently legible to</p> <p>13 me. Let's see. Yeah. I think we can pass</p> <p>14 on this.</p> <p>15 Do you have any idea what these</p> <p>16 represent?</p> <p>17 MR. MARTIN: Objection, form.</p> <p>18 A. It's tough to make it out, but -- I</p> <p>19 don't know if this is the structure that</p> <p>20 Starwood had, who was the owner of the</p> <p>21 portfolio, and they're just reflecting that,</p> <p>22 or if this is a proposed structure for the</p> <p>23 acquisition itself.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. And this is Highland263748,</p>
<p style="text-align: right;">Page 96</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Of Exhibit E.</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Next chart, please.</p> <p>7 And, again, this would be</p> <p>8 Highland263749.</p> <p>9 Do you know what this is?</p> <p>10 A. Similarly, it's tough to tell, but</p> <p>11 more of the same if that was the existing</p> <p>12 structure of the asset at the time of the</p> <p>13 acquisition.</p> <p>14 Q. Next chart, please. This is</p> <p>15 263750.</p> <p>16 Again, do you know what this is?</p> <p>17 A. Same thing, existing structure.</p> <p>18 Q. Next chart. Same answer for</p> <p>19 263751?</p> <p>20 A. Yes, sir. It just looks like the</p> <p>21 underlying property or asset changes. But,</p> <p>22 yes, sir.</p> <p>23 Q. Okay. Next chart.</p> <p>24 Go to the next chart after this.</p> <p>25 And the next chart. Next chart. Keep going.</p>	<p style="text-align: right;">Page 97</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Keep going. Keep going.</p> <p>3 Okay. One more -- okay. One more.</p> <p>4 This is a different format. Do you</p> <p>5 know how this is different from the</p> <p>6 other charts?</p> <p>7 A. I don't know why. It just looks</p> <p>8 like a different structure.</p> <p>9 Q. Okay. Let's go back to the</p> <p>10 original email.</p> <p>11 Hold on a second. It says</p> <p>12 K&amp;E Draft on all of these charts.</p> <p>13 What does that mean?</p> <p>14 A. I believe Kirkland &amp; Ellis.</p> <p>15 Q. Okay. And were these generated by,</p> <p>16 do you know, the seller -- the potential</p> <p>17 seller of the assets to the limited -- to the</p> <p>18 LLC?</p> <p>19 A. Yes, sir. I believe this was the</p> <p>20 existing structure in place.</p> <p>21 Q. I see.</p> <p>22 A. At the time.</p> <p>23 Q. Okay. Let's go back to the</p> <p>24 original email.</p> <p>25 Okay. On both these emails from</p>

<p>Page 98</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Paul Broadus, the July 27 email and the 3 August 1 email that constitute Exhibit E, 4 they were sent and received by D.C. Sauter of 5 Wick Phillips, correct? They were sent to 6 and received by D.C. Sauter? 7 A. Yes, sir. 8 Q. And do you know if Wick Phillips 9 ever responded to these emails in any way? 10 A. I don't believe so. 11 Q. Okay. Did Wick Phillips have any 12 communications with Paul Broadus relating to 13 the charts attached on these emails? 14 A. Not other than what we previously 15 discussed. 16 Q. Okay. Let's move on to Exhibit F. 17 (SE Multifamily Holdings LLC First 18 Amended and Restated Limited 19 Liability Company Agreement, marked 20 as Exhibit F.) 21 BY MR. BROWN: 22 Q. So Exhibit F is the SE Multifamily 23 Holdings LLC First Amended and Restated 24 Limited Liability Company Agreement, dated as 25 of March 15, 2019, to be effective August 23,</p>	<p>Page 99</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 2018, correct? 3 A. Yes, sir. 4 Q. And is this a true copy of that, 5 this Agreement? 6 A. It looks to be so, yes, sir. 7 MR. BROWN: Let me just digress for 8 a moment. 9 Lauren, we had agreed by emails 10 that the documents attached to both 11 declarations, the Morris declaration and 12 the McGraner declaration, that we could 13 stipulate to their authenticity. 14 MS. DRAWHORN: Yes. 15 MR. BROWN: So with respect to 16 Exhibit B to this deposition, the 17 original LLC Agreement, the 18 Loan Agreement, I believe, which is 19 Exhibit C, and this Loan Agreement, 20 Exhibit F, the Amended and Restated 21 Limited Liability Agreement, we're 22 agreeing that they're authentic. 23 We're reserving whatever other 24 objections, but nobody -- we're agreeing 25 as to authenticity. So I'm not going to</p>
<p>Page 100</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 worry about dealing with that in this 3 deposition. 4 Is that agreed, they're authentic? 5 MS. DRAWHORN: Yes. That's agreed. 6 BY MR. BROWN: 7 Q. Okay. So tell me what this 8 document is, Mr. Wills. 9 A. Sure. It's the Amended and 10 Restated LLC Agreement for SE Multifamily 11 Holdings. My understanding in talking to 12 D.C. Sauter was that KeyBank retraded us at 13 the last minute and pulled back some of the 14 previously committed funds, and so we were 15 short about 20 million, which is why we 16 needed to bring in additional equity. 17 There was a previous relationship 18 with BH on some prior multifamily deals, and 19 so BH came in as the bridge equity, for lack 20 of a better term. So the contributions 21 changed and it's memorialized here. 22 Q. Do you know where they're 23 memorialized in the Agreement? And I can 24 tell you if we flip to Schedule A. 25 A. Yes, sir. That's where I was going</p>	<p>Page 101</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 as well. 3 (Email chain, "FW: Draft LLC 4 Agreement," marked as Exhibit H.) 5 BY MR. BROWN: 6 Q. Okay. So you had referred to BH in 7 your testimony you just gave. 8 And if you look at Schedule A to 9 the Amended LLC Agreement, it provides the 10 capital contributions and percentage 11 interest, correct? 12 A. Correct. 13 Q. And is this Schedule A, the chart 14 on Schedule A reflecting current -- the 15 percentage interest, is that what you were 16 referring to in terms of changing the 17 ownership interest? 18 A. Yes, sir. 19 Q. And is that an accurate statement 20 regarding the ownership interest of the 21 parties? 22 A. I believe it accurately shows the 23 BH portion, and on the remainder, I'm not 24 positive. 25 Q. Okay. Let me -- let's back up a</p>

<p style="text-align: right;">Page 102</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 little bit. 3 Did -- what was Wick Phillips' role 4 in connection with the Amended and Restated 5 Limited Liability Company Agreement that's 6 Exhibit E? 7 Let's just -- I'm going to try to 8 make it simple. 9 Like we referred to the original 10 Agreement in this deposition as the 11 LLC Agreement, can we refer to this as -- if 12 I refer to this as the Amended LLC Agreement, 13 you'll understand I'm referring to Exhibit F, 14 correct? 15 A. Yes, sir. 16 Q. Okay. So what was Wick Phillips' 17 role in connection with the Amended 18 LLC Agreement? 19 A. We did not have one, other than 20 delivering, you know, and communicating with 21 KeyBank on the modified structure. 22 Q. Okay. So I don't believe I have 23 seen any -- well, let me back up. 24 How were the communications with 25 KeyBank on the modified structure? What form</p>	<p style="text-align: right;">Page 103</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 did those communications take? 3 A. I would assume telephonic or email. 4 MR. BROWN: Hayley, are you on the 5 call? 6 MS. WINOGRAD: Yes. I'm here. 7 MR. BROWN: I have not seen and I 8 don't know if -- I don't think we've 9 received any communications between 10 Wick Phillips and KeyBank relating to 11 the Amended LLC Agreement, have we? 12 MS. WINOGRAD: I haven't seen any, 13 no. 14 BY MR. BROWN: 15 Q. So I guess, Mr. Wills, it raises 16 the question, we've asked for documents -- 17 and maybe, Lauren, this is better addressed 18 to you -- 19 MR. MARTIN: Yeah. Mr. Brown, I'll 20 represent to you, we haven't found any 21 of those communications. I think 22 Mr. Wills is mistaken on that. 23 MR. BROWN: Okay. 24 MR. MARTIN: We're not withholding 25 anything, and if we were withholding</p>
<p style="text-align: right;">Page 104</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 something, we would have produced a 3 privilege log or some other grounds for 4 withholding. I'm never in the business 5 of withholding anything that you're 6 otherwise entitled to. 7 MR. BROWN: And I'm not accusing. 8 I was just confused because -- 9 MR. MARTIN: I appreciate that. 10 MR. BROWN: -- I'm familiar with 11 the documents that were produced and 12 I've looked at them fairly closely in 13 this deposition and I never saw any 14 communications between Wick Phillips and 15 KeyBank. 16 MR. MARTIN: Yeah. I think if you 17 ran the tape back, you would probably 18 see both Ms. Drawhorn and I raise our 19 eyebrows when Mr. Wills said that. I 20 think he was simply mistaken. 21 BY MR. BROWN: 22 Q. Mr. Wills, in light of that 23 discussion, let's talk about, again, what 24 your understanding is of Wick Phillips' role 25 in connection with the Amended LLC Agreement.</p>	<p style="text-align: right;">Page 105</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 A. We did not have one. 3 Q. You don't -- let me ask you this: 4 You indicated in your prior testimony that 5 you believed there were communications with 6 KeyBank regarding the Amended LLC Agreement. 7 Why did you think that? 8 A. Well, that has been the siloed role 9 that we've maintained throughout the 10 Project Unicom transaction as sort of the 11 conduit in between the lender and the various 12 borrowers. 13 Q. Okay. So I think your counsel has 14 represented that there were no emails between 15 Wick Phillips and KeyBank concerning the 16 Amended LLC Agreement. 17 Are you aware of whether there were 18 emails that took place in form -- I'm sorry, 19 whether there were communications that took 20 place in a form other than an email 21 communication? 22 A. I'm not aware. 23 Q. So is it true that Wick Phillips 24 did not represent any party to the Amended 25 LLC Agreement?</p>

<p style="text-align: right;">Page 106</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Correct. We did not prepare it or</p> <p>3 have anything to do with that agreement.</p> <p>4 Q. And is there any retention</p> <p>5 agreement with respect to the LLC Agreement?</p> <p>6 A. No, sir.</p> <p>7 Q. Do you know if Wick Phillips had</p> <p>8 any communications with James Dondero in</p> <p>9 connection with the Amended LLC Agreement?</p> <p>10 A. I do not.</p> <p>11 Q. So let's focus again -- I think</p> <p>12 that before we established that</p> <p>13 Wick Phillips -- your testimony that</p> <p>14 Wick-Phillips had no role in connection with</p> <p>15 the Amended LLC Agreement. We didn't</p> <p>16 complete the questions with respect to your</p> <p>17 knowledge of the percentage interest set</p> <p>18 forth in the Amended LLC Agreement.</p> <p>19 So what is your understanding</p> <p>20 concerning the accuracy of the percentage</p> <p>21 interest set forth in Schedule A to the</p> <p>22 Amended LLC Agreement?</p> <p>23 A. In speaking with D.C., I believe</p> <p>24 they modified this with the intent of</p> <p>25 updating it prior to any distribution. But</p>	<p style="text-align: right;">Page 107</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 other than that, I'm not aware of the</p> <p>3 accuracy one way or the other.</p> <p>4 Q. I'm not sure I understand what that</p> <p>5 means. Can you help me understand? When you</p> <p>6 say, "they modified this with the intent of</p> <p>7 updating it prior to the distribution."</p> <p>8 Can you unpack that for me?</p> <p>9 Because I don't understand what that means.</p> <p>10 Modified what?</p> <p>11 A. Well, they added in the BH portion</p> <p>12 and then, obviously, the HCRC contributions</p> <p>13 and percentages and the Highland</p> <p>14 contributions and percentages are different</p> <p>15 from the original LLC Agreement.</p> <p>16 Q. Okay. And they're -- I mean, the</p> <p>17 math, I'm sure if you did it on a calculator,</p> <p>18 it would reflect that these percentages are</p> <p>19 modified from the original percentages, 49</p> <p>20 and 51, based on a proportional pro rata</p> <p>21 reduction for the 6 percent given to</p> <p>22 BH Management, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Does Wick Phillips have any</p> <p>25 knowledge concerning whether or not the</p>
<p style="text-align: right;">Page 108</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 percentages reflected in this Schedule A do</p> <p>3 not accurately reflect what the parties</p> <p>4 intended?</p> <p>5 MR. MARTIN: Objection, form.</p> <p>6 A. I don't know.</p> <p>7 MR. BROWN: Okay. I'd like to take</p> <p>8 a brief recess.</p> <p>9 And, Hayley, I'd like to talk on</p> <p>10 the phone with you, so can we have a</p> <p>11 separate phone call?</p> <p>12 MS. WINOGRAD: Sure.</p> <p>13 MR. BROWN: I'm going to put myself</p> <p>14 on mute and stop the video.</p> <p>15 And, Hayley, can you call me on my</p> <p>16 cell?</p> <p>17 MS. WINOGRAD: Yeah. I'll do that</p> <p>18 right now.</p> <p>19 (Recess taken.)</p> <p>20 BY MR. BROWN:</p> <p>21 Q. Do you know who represented HCRC</p> <p>22 and Highland in connection with the Amended</p> <p>23 LLC Agreement?</p> <p>24 A. I believe it was Hunton &amp; Williams.</p> <p>25 Q. And what do you base that</p>	<p style="text-align: right;">Page 109</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 understanding on?</p> <p>3 A. Review of some material in</p> <p>4 connection with the deposition.</p> <p>5 Q. What material?</p> <p>6 A. Some of these exhibits.</p> <p>7 (Technical interruption, 1:29 p.m.</p> <p>8 to 1:34 p.m.)</p> <p>9 BY MR. BROWN:</p> <p>10 Q. So Mr. Wills, we've covered</p> <p>11 Wick Phillips' involvement in the</p> <p>12 representation of the parties in connection</p> <p>13 with the Loan Agreement, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And Wick Phillips represented the</p> <p>16 borrowers in connection with the</p> <p>17 Loan Agreement, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And Wick Phillips communicated with</p> <p>20 both -- with Highland, I think you've</p> <p>21 acknowledged through Paul Broaddus, with</p> <p>22 respect to the ownership interests in the LLC</p> <p>23 in connection with the Loan Agreement,</p> <p>24 correct?</p> <p>25 MR. MARTIN: Objection, form.</p>

<p style="text-align: right;">Page 110</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I don't think that's accurate. We</p> <p>3 had -- we communicated with Mr. Broaddus as</p> <p>4 it related to finalizing and forwarding the</p> <p>5 org charts that are part of Schedule 3.15 to</p> <p>6 the Loan Agreement.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. And those org charts contain a</p> <p>9 reflection of the ownership interest as they</p> <p>10 appear on the LLC Agreement, correct?</p> <p>11 A. Yes, sir. That's what they said.</p> <p>12 Q. And those org charts that were</p> <p>13 transmitted by Wick Phillips to</p> <p>14 Paul Broaddus, among others, reflect an</p> <p>15 ownership interest of 51 percent in HCRE and</p> <p>16 49 percent in Highland, correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And the percentage interests that</p> <p>19 appear in Schedule A of the Amended</p> <p>20 LLC Agreement reflect those same ownership</p> <p>21 interests adjusted for the addition of</p> <p>22 BH Management as a 6 percent owner, correct?</p> <p>23 MR. MARTIN: Objection, form.</p> <p>24 I'm going to instruct the witness</p> <p>25 to not answer the question as being</p>	<p style="text-align: right;">Page 111</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 outside the scope of the 30(b)(6)</p> <p>3 notice.</p> <p>4 And the record should probably</p> <p>5 reflect, Mr. Brown, I think you would</p> <p>6 agree with me, the court reporter lost</p> <p>7 about five minutes' worth of testimony.</p> <p>8 So I appreciate the fact that</p> <p>9 you're trying to go back through it</p> <p>10 methodically. I certainly don't want to</p> <p>11 get in the way with that. But we got</p> <p>12 into a scrap while she was offline about</p> <p>13 this and about what the scope of the</p> <p>14 30(b)(6) deposition notice is.</p> <p>15 So we perhaps have to have that</p> <p>16 discussion over again.</p> <p>17 MR. BROWN: Okay. Well, if you're</p> <p>18 instructing him not to answer --</p> <p>19 BY MR. BROWN:</p> <p>20 Q. Are you going to follow your</p> <p>21 counsel's instruction, Mr. Wills?</p> <p>22 A. Yes, sir.</p> <p>23 MR. BROWN: Okay.</p> <p>24 All right. I don't have any</p> <p>25 further questions.</p>
<p style="text-align: right;">Page 112</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. MARTIN: Okay. I've got a few</p> <p>3 questions.</p> <p>4 Are you passing the witness,</p> <p>5 Mr. Brown?</p> <p>6 MR. BROWN: I'll pass the witness</p> <p>7 and reserve my right to reexamine.</p> <p>8 MR. MARTIN: Okay. Well, I guess I</p> <p>9 should make it clear that we're going to</p> <p>10 ask you to petition the Court for a</p> <p>11 reexamination because we presented</p> <p>12 Mr. Wills here and are giving you ample</p> <p>13 opportunity to ask questions.</p> <p>14 MR. BROWN: Well, I may need to</p> <p>15 clarify questions that you ask.</p> <p>16 MR. MARTIN: After the read and</p> <p>17 sign, that would be standard procedure,</p> <p>18 and I would not disagree with that.</p> <p>19 MR. BROWN: Well, you're going to</p> <p>20 ask him some questions.</p> <p>21 MR. MARTIN: Oh, I'm sorry. Yeah,</p> <p>22 yeah. I'm sorry.</p> <p>23 After me? Sure.</p> <p>24 MR. BROWN: That's what I mean.</p> <p>25 MR. MARTIN: I apologize. I didn't</p>	<p style="text-align: right;">Page 113</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 understand what you were saying. I</p> <p>3 thought you were saying we'd get back</p> <p>4 together at some point in the future.</p> <p>5 MR. BROWN: No. I want the</p> <p>6 opportunity to, essentially, redirect</p> <p>7 after you --</p> <p>8 MR. MARTIN: Recross after my</p> <p>9 direct? Sure.</p> <p>10 Does anybody else have any</p> <p>11 questions before I go? Ms. Dandeneau?</p> <p>12 MS. DANDENEAU: No, I do not.</p> <p>13 MR. MARTIN: Okay. And I apologize</p> <p>14 if I tortured your name.</p> <p>15 MS. DANDENEAU: You actually said</p> <p>16 it perfectly -- well, pretty perfectly.</p> <p>17 ---</p> <p>18 EXAMINATION</p> <p>19 BY MR. MARTIN:</p> <p>20 Q. Okay. Mr. Wills, most of my</p> <p>21 questions are going to be just follow-up to</p> <p>22 what Mr. Brown asked you.</p> <p>23 Who is it your understanding that</p> <p>24 Wick Phillips represented in connection with</p> <p>25 the Loan Agreement?</p>

<p style="text-align: right;">Page 114</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. The borrowers.</p> <p>3 Q. And of those, was there any</p> <p>4 representation -- Mr. Brown asked you a lot</p> <p>5 of questions about Highland being the lead</p> <p>6 borrower.</p> <p>7 Do you remember that?</p> <p>8 MR. BROWN: That's an incorrect --</p> <p>9 by the way, you're mischaracterizing.</p> <p>10 It was HCRE, not Highland.</p> <p>11 MR. MARTIN: Okay. HCRE.</p> <p>12 BY MR. MARTIN:</p> <p>13 Q. Did HCRE have its own counsel</p> <p>14 in-house or outside counsel?</p> <p>15 A. No.</p> <p>16 Q. Now, at Wick Phillips, at the time</p> <p>17 of these transactions, who would have</p> <p>18 consulted with the client about possible</p> <p>19 conflicts or waiver of conflicts that</p> <p>20 Mr. Brown was asking you about?</p> <p>21 A. D.C. Sauter.</p> <p>22 Q. Okay. And at the time, Mr. Sauter</p> <p>23 was a partner at Wick Phillips, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Is Mr. Sauter still a partner at</p>	<p style="text-align: right;">Page 115</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Wick Phillips?</p> <p>3 A. No, sir.</p> <p>4 Q. And who would have consulted with</p> <p>5 the client regarding Mr. Brown's questions</p> <p>6 about the mechanics of the loan, who directed</p> <p>7 what, where the money was going, what the</p> <p>8 role of the lead borrower was compared to the</p> <p>9 other borrowers, etc.?</p> <p>10 A. D.C. Sauter.</p> <p>11 Q. Now, to your knowledge -- and I'm</p> <p>12 just going to try to make all of this crystal</p> <p>13 clear. Because I think this is where the</p> <p>14 fight with Mr. Brown is going to come in.</p> <p>15 To your knowledge, did</p> <p>16 Wick Phillips have anything to do with the</p> <p>17 formation of the LLC Agreement or the</p> <p>18 negotiation of the LLC Agreement?</p> <p>19 A. No, sir.</p> <p>20 Q. Can you explain in</p> <p>21 non-real-estate-lawyer terms what the scope</p> <p>22 of the representation was of Wick Phillips in</p> <p>23 the matter at issue?</p> <p>24 A. Yes. Our -- the scope of our</p> <p>25 representation was at specifically the real</p>
<p style="text-align: right;">Page 116</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 estate/property level, working with</p> <p>3 essentially going through the</p> <p>4 lender required --</p> <p>5 MR. BROWN: Can I just interpose</p> <p>6 an -- ask for clarification?</p> <p>7 You asked for Wick Phillips' role</p> <p>8 in the matter at issue.</p> <p>9 Could you clarify, please, what the</p> <p>10 matter at issue is that you're referring</p> <p>11 to?</p> <p>12 BY MR. MARTIN:</p> <p>13 Q. Mr. Wills, who has Wick Phillips</p> <p>14 represented while you're here today?</p> <p>15 A. NexPoint.</p> <p>16 MR. BROWN: Again, I'm going to</p> <p>17 object. It's vague and ambiguous.</p> <p>18 Do you mean with respect to the</p> <p>19 claim --</p> <p>20 MR. MARTIN: Make an objection.</p> <p>21 MR. BROWN: Do you mean with</p> <p>22 respect to the Loan Agreement? Do you</p> <p>23 mean with respect to the LLC Agreement?</p> <p>24 There's several -- Wick Phillips</p> <p>25 has more than one representation. I'm</p>	<p style="text-align: right;">Page 117</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 just trying to get the record clear on</p> <p>3 what you're asking him.</p> <p>4 MR. MARTIN: Are you finished?</p> <p>5 MR. BROWN: Yes.</p> <p>6 MR. MARTIN: I would ask you to</p> <p>7 keep your objections to the "objection,</p> <p>8 form" called for by the Federal Rules of</p> <p>9 Civil Procedure. If I ask you for the</p> <p>10 basis, then you can make a speaking</p> <p>11 objection.</p> <p>12 You are still trying to conflate</p> <p>13 all of these issues. I'm trying to</p> <p>14 separate them out to make them clear. I</p> <p>15 get to ask my questions, and if you want</p> <p>16 to come back and ask other questions,</p> <p>17 you can.</p> <p>18 MR. BROWN: Thank you for the</p> <p>19 lecture and for the instructions on how</p> <p>20 to practice law.</p> <p>21 MR. MARTIN: Well, you started it.</p> <p>22 BY MR. MARTIN:</p> <p>23 Q. Are you aware that NexPoint had a</p> <p>24 shared services agreement with one of the</p> <p>25 Highland entities, which is why their email</p>

<p>Page 118</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 addresses have Highland Capital in them?</p> <p>3 A. Yes.</p> <p>4 Q. Did Wick Phillips form the LLC that</p> <p>5 Mr. Brown asked you about today?</p> <p>6 A. No.</p> <p>7 Q. Did Wick Phillips draft or</p> <p>8 negotiate the Amended LLC Agreement that</p> <p>9 Mr. Brown asked you about today?</p> <p>10 A. No.</p> <p>11 Q. If, in fact, another law firm</p> <p>12 drafted the LLC Agreement, would that be</p> <p>13 consistent with your understanding of how the</p> <p>14 LLC was formed?</p> <p>15 A. Yes.</p> <p>16 Q. Regardless of who formed the LLC,</p> <p>17 as a real estate lawyer, since Wick Phillips</p> <p>18 was representing NexPoint and the borrowers,</p> <p>19 would Wick Phillips had to have known the</p> <p>20 ownership structure of the LLC in order to</p> <p>21 work on Project Unicorn?</p> <p>22 A. Yes.</p> <p>23 Q. Why?</p> <p>24 A. So that we could accurately</p> <p>25 communicate that to KeyBank, and because</p>	<p>Page 119</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 those same -- the structure charts are</p> <p>3 attached as an exhibit to the Loan Agreement.</p> <p>4 Q. I'm going to direct your attention</p> <p>5 to the exhibits that Mr. Brown provided prior</p> <p>6 to this deposition and ask you to look at</p> <p>7 Exhibit H.</p> <p>8 And you were in the room when we</p> <p>9 became aware that the court reporter was</p> <p>10 offline for a little bit, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And if my memory of this is</p> <p>13 correct, I think she was offline when</p> <p>14 Mr. Brown asked you a couple of questions</p> <p>15 about Exhibit H.</p> <p>16 Do you remember that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Can you please look at Exhibit H</p> <p>19 and tell me, on the -- that's an email string</p> <p>20 starting on July 27, 2018, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And who is the author of the first</p> <p>23 email in that chain?</p> <p>24 A. Alexander McGeoch.</p> <p>25 Q. And Mr. McGeoch's email signature</p>
<p>Page 120</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 indicates he's a partner at Hunton Andrews</p> <p>3 Kurth, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. In Dallas, Texas, right?</p> <p>6 A. Correct.</p> <p>7 Q. Who is the email addressed to?</p> <p>8 A. Mark Patrick.</p> <p>9 Q. And Mark Patrick you previously</p> <p>10 identified as being one of the in-house</p> <p>11 people at Highland, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And is there a Wick Phillips</p> <p>14 attorney on the email from Mr. McGeoch to</p> <p>15 Mr. Patrick?</p> <p>16 A. No, sir.</p> <p>17 Q. And then the top email on Exhibit H</p> <p>18 is from Mr. Patrick to Tim Courmoyer,</p> <p>19 correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And it's my understanding</p> <p>22 Tim Courmoyer is a Highland person as well,</p> <p>23 correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And he doesn't work at</p>	<p>Page 121</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Wick Phillips, does he?</p> <p>3 A. He does not.</p> <p>4 Q. And there's no Wick Phillips</p> <p>5 attorney on either of these emails, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Could you read Mr. McGeoch's email</p> <p>8 beginning with the word "Mark"?</p> <p>9 A. (Reading.)</p> <p>10 "Mark, a draft of the Unicorn LLC</p> <p>11 agreement is attached. We need to</p> <p>12 select another name because Unicorn</p> <p>13 is taken in Delaware. It would be</p> <p>14 helpful to schedule a call with you</p> <p>15 to walk through our thoughts on the</p> <p>16 allocation and distribution drafting</p> <p>17 approach we took. Please let me</p> <p>18 know if you have time for a call</p> <p>19 with Mark and me this morning.</p> <p>20 "Thanks, Alex."</p> <p>21 Q. So does that indicate to you that</p> <p>22 Hunton Andrews Kurth actually was involved in</p> <p>23 the allocation and distribution drafting of</p> <p>24 the LLC Agreement?</p> <p>25 A. Yes.</p>



<p style="text-align: right;">Page 122</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. When Mr. Brown asked you questions</p> <p>3 about Mr. Wick Phillips' role in drafting the</p> <p>4 LLC Agreement, he didn't ask you about Hunton</p> <p>5 Andrews Kurth, did he?</p> <p>6 A. No, sir.</p> <p>7 (Email chain "RE: SE Multi-Family</p> <p>8 Holdings LLC: Amended and</p> <p>9 Restated," beginning Bates</p> <p>10 Highland136853, marked as Exhibit</p> <p>11 I.)</p> <p>12 BY MR. MARTIN:</p> <p>13 Q. If you would, please, look at</p> <p>14 Exhibit I.</p> <p>15 A. Okay.</p> <p>16 Q. This is an email chain, several</p> <p>17 pages long. And if we're going by the Bates</p> <p>18 numbers, from -- starting on Highland136853</p> <p>19 through Highland136856.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Will you page through any of those</p> <p>23 emails and identify any email addresses from</p> <p>24 Wick Phillips that are included in that</p> <p>25 chain?</p>	<p style="text-align: right;">Page 123</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. There are no Wick Phillips' emails.</p> <p>3 MR. MARTIN: Okay. I'll pass the</p> <p>4 witness.</p> <p>5 MR. BROWN: Ms. Vosburgh, could you</p> <p>6 go back to the first question that</p> <p>7 Counsel asked on his set of questions of</p> <p>8 Mr. Wills, to the first question, and</p> <p>9 read it back to me.</p> <p>10 THE REPORTER: (Reading back.)</p> <p>11 "Question: Okay. Mr. Wills, most</p> <p>12 of my questions are going to be</p> <p>13 follow-up questions to what</p> <p>14 Mr. Brown asked you.</p> <p>15 "Who is it your understanding that</p> <p>16 Wick Phillips represented in</p> <p>17 connection with the Loan Agreement?"</p> <p>18 "Answer: The borrowers."</p> <p>19 MR. BROWN: Okay. There's a</p> <p>20 question regarding the matter at hand.</p> <p>21 That's the one I want read back.</p> <p>22 THE REPORTER: (Reading back.)</p> <p>23 "Question: Can you explain in</p> <p>24 non-real-estate-lawyer terms what</p> <p>25 the scope of the representation was</p>
<p style="text-align: right;">Page 124</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 of Wick Phillips in the matter at</p> <p>3 issue?"</p> <p>4 THE REPORTER: Is that the one?</p> <p>5 MR. BROWN: Yes.</p> <p>6 THE REPORTER: (Reading back.)</p> <p>7 "Answer: Yes. Our -- the scope</p> <p>8 of our representation was at</p> <p>9 specifically the real</p> <p>10 estate/property level working with</p> <p>11 especially going through the lender</p> <p>12 required --"</p> <p>13 And then there was an interjection.</p> <p>14 --</p> <p>15 RE-EXAMINATION</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Okay. Mr. Wills, I want to</p> <p>18 understand what your understanding was when</p> <p>19 you were asked about the scope of the</p> <p>20 representation of the matter at issue.</p> <p>21 What matter at issue did you</p> <p>22 understand was being referred to?</p> <p>23 A. Wick Phillips' role with</p> <p>24 Project Unicorn.</p> <p>25 Q. Okay. So you were not answering</p>	<p style="text-align: right;">Page 125</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 the question in connection with</p> <p>3 Wick Phillips' role in connection with the</p> <p>4 Loan Agreement then, were you?</p> <p>5 A. Well, to me, Project Unicorn</p> <p>6 incorporates really all of the topics on the</p> <p>7 depo notice, the Loan Agreement,</p> <p>8 LLC Agreements. It's all sort of the same</p> <p>9 global project.</p> <p>10 Q. But you've already testified, have</p> <p>11 you not, and Wick Phillips has already</p> <p>12 acknowledged in its papers that it filed in</p> <p>13 the bankruptcy court that it represented the</p> <p>14 borrowers in connection with the</p> <p>15 Loan Agreement, correct?</p> <p>16 A. Correct.</p> <p>17 MR. BROWN: I don't have any other</p> <p>18 questions.</p> <p>19 MR. MARTIN: We'll reserve. Thank</p> <p>20 you.</p> <p>21 (The deposition was concluded at</p> <p>22 1:51 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>

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<div style="display: flex; justify-content: space-between;"> <span>1 Wick Phillips 30(b)(6) - R. Wills</span> <span>2 CERTIFICATE</span> </div> <div style="margin-top: 10px;"> 3  4 I, ANNE E. VOSBURGH, Certified Shorthand  5 Reporter, Registered Professional Reporter,  6 Certified Realtime Reporter, and Closed  7 Captioner, hereby certify:  8 That ROB WILLIS, via remote  9 videoconference, solemnly affirmed and agreed to  10 testify to the truth, the whole truth and  11 nothing but the truth; that all counsel  12 stipulated to this process, notwithstanding the  13 location of reporter or witness at time of  14 deposition; and that this transcript is a true  15 and correct record of testimony given.  16 I further certify that I am not related  17 to any of the parties to this action and that I  18 am in no way interested in the outcome of this  19 matter. Dated: August 11th, 2021.  20  21 _____  22 ANNE E. VOSBURGH  23 Certified Shorthand Reporter No. 6804  24 Registered Professional Reporter  25 Certified Realtime Reporter </div>	<div style="display: flex; justify-content: space-between;"> <span>1 ERRATA SHEET</span> </div> <div style="margin-top: 10px;"> 2 Case Name:  3 Deposition Date:  4 Deponent:  5 Pg. No. Now Reads Should Read Reason  6 _____  7 _____  8 _____  9 _____  10 _____  11 _____  12 _____  13 _____  14 _____  15 _____  16 _____  17 _____  18 _____  19 _____  20  21 _____  22 Signature of Deponent  23 SUBSCRIBED AND SWORN BEFORE ME  24 THIS ____ DAY OF _____, 2021.  25 _____  26 (Notary Public) MY COMMISSION EXPIRES: _____ </div>

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